

No. 34 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE
IN PROCEEDINGS NO. 52 of 1980

B E T W E E N :

KAOLIM PRIVATE LIMITED

Appellant
(Defendant)

- and -

10 UNITED OVERSEAS LAND LIMITED

Respondent
(Plaintiff)

CASE FOR THE RESPONDENT

Record

1. This is an appeal brought (pursuant to leave granted by the Court of Appeal in Singapore on 25th May 1981) from a Judgment of that Court of Appeal dated 15th January 1981 (Kulasekaram J., Sinnathuray J., and D'Cotta J.) by which the Court of Appeal upheld the order of the Honourable the Chief Justice Mr. Justice Wee Chong Jin dated 28th April 1980 granting to the Respondents, as Plaintiffs, a declaration against both Defendants in the terms of Paragraph 4 of the Amended Originating Summons dated 9th April 1980 as amended on 19th April 1980.
- 20
2. The Appellants were the owners of land and a building known as Kaolim Building at No. 20, Kramat Lane, Singapore (the property), which they had bought in June 1976 for \$4,850,000. To complete that purchase they had mortgaged the property to the Far Eastern Bank Limited ("the Bank") by a mortgage deed dated 4th June 1976 for an overdraft facility of \$3,000,000. In November 1976 they granted the Bank a second mortgage to cover an increase in the overdraft facility to \$3,500,000.
- 30
3. By virtue of the said mortgages the Bank acquired the power to sell the mortgaged property
- pp.99-101
pp.95-99
p. 85
pp.1-3

<u>Record</u>	given by s.24 of the Conveyancing & Law of Property Act (Cap. 268). The Bank sought to exercise that power by offering the property for sale by tender on 10th March 1980. On 20th March 1980 the Respondents submitted a tender to the Bank's solicitors to purchase the property for a total sum of \$8,000,000. By letter dated 20th March 1980 the Bank's solicitors accepted the said tender on the Bank's behalf and appropriated the 20% deposit which the Respondents had paid with their said tender.	10
p.12		
p.22		
pp.7-12	4. The said tender incorporated Conditions of Tender (numbered 1-29) and also The (revised) Singapore Conditions of Sale.	
pp.14-21		
	5. After the contract had been made, it emerged that there were arrears of property tax due from the Appellants in respect of the property. These arrears totalled \$531,242.53, made up as follows:	
p.24	(a) Arrears up to 31st December 1979	\$459,291.43
	(b) Current half year payable in advance in January 1980	55,025.00
	(c) Interest, penalty and fee	6,926.10
	Property tax is imposed by the Property Tax Act (Chapter 144) and is payable half-yearly in advance by the owner of the relevant property (see section 6). The Comptroller of Property Tax ("the Comptroller") has a first charge over the property and the power, under s.35, to recover arrears by a sale of the property.	30
p.24	6. On 2nd April 1980 the Bank received a letter dated 31st March 1980 from the Comptroller who stated that the property had been sold and that property tax was a first charge on the property, and requested payment of the said arrears. Copies of this letter were also sent to the solicitors for the Appellants, the Respondents and the Bank.	
pp.25-26	7. On 2nd April 1980 the Solicitors for the Bank wrote to the Comptroller, with copies to the solicitors for the Appellants and the Respondent, stating that in the light of Clause 16 of the Conditions of Tender the claim for property tax should be made to the Respondents.	40
p.10	8. Clause 16 of the Conditions of Tender provided that:	
11.5-23		

"16. The property is sold subject to:-

Record

10(c) all notices, charges, Orders of Court, charging orders, caveats and court or other claims affecting the property made or served whether on or after the date of Sale. The Purchaser shall be deemed to have purchased with full knowledge and notice of all such schemes or proposed schemes, layouts, notices, demands, charges, Orders of Court, charging orders, caveats and court or other claims which shall be complied with and discharged by and at the expense of the Purchaser, who shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof".

9. Clause 6 of the Revised Singapore Conditions of Sale provided that:-

p.15
11.15-25

20 "The outgoing will be discharged by the Vendor down to the date fixed for completion, as from which day all outgoing shall be discharged by and the rents and profits or possession shall belong to the Purchaser (such outgoing, rents and profits, if necessary, being apportioned) but the Purchaser shall nevertheless not be let into actual possession or receipt of rents until completion of the purchase, and the Purchaser shall on completion pay to the Vendor a due proportion of the current rents less the like proportion of the current outgoing."

30

10. The Respondents took issue with the Bank's interpretation of the said Clause 16, as a result of which the originating summons herein was issued.

11. When the said summons came before the Learned Chief Justice the situation was as follows:

- (i) the contract for sale of the property by the Bank and the Respondents had not been completed;
- 40 (ii) the Respondents had not paid the purchase price to the Bank, save for the 20% deposit;
- (iii) the arrears of property tax had not been paid by anyone to the Comptroller;
- (iv) it was established that the total indebtedness of the Appellants to the Bank did not exceed \$5,000,000, so that the balance of the purchase money after

satisfaction of the Bank's claim would amount to some \$3,000,000.

12. It was thus plain that, however the Property Tax was paid, the Bank would receive payment in full out of the proceeds of sale, and that even after payment of the Bank and of the Property Tax there would be a surplus for the Appellants. The only real issue therefore was, and is, whether the cost of paying the arrears of property tax should fall upon the Appellants or the Respondents. The Bank therefore has taken no part in the proceedings in the Court of Appeal or in this Appeal. 10

13. Before the Learned Chief Justice the Respondents contended:

(a) that as between themselves and the Bank they were not liable to pay property tax, since on its true construction Clause 16 of the Conditions of Tender did not apply. The Respondents sought to rely upon Clause 6 of the Revised Singapore Conditions of Sale; 20

(b) that in any event the Appellants could not rely upon the said Clause 16, since they were not parties to the contract between the Respondents and the Bank;

(c) that even if the Respondents, rather than the Bank, were required to discharge the arrears of property tax, they were entitled to receive the amount so paid from the Appellants and thus to be subrogated to the rights of the Appellants or the Comptroller in the surplus of the proceeds of sale (after satisfaction of the Bank's claim) and/or to set off the amount of any tax paid against payment of the surplus of the price. 30

p.85

14. The Learned Chief Justice did not seek to construe Clause 16 but, on the assumption that the Respondents, rather than the Bank, should pay the arrears of tax to the Comptroller, he granted a declaration that upon payment of the said arrears at completion the Respondents were subrogated to the rights of the Comptroller or the Appellant to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the Appellants. 40

15. In accordance with the order of the Learned Chief Justice, the Respondents on 5th May 1980 paid to the Comptroller the said sum of \$521,242.53. On the same day the purchase of the property was completed, and the Respondents paid to the Bank

the whole balance of the purchase price, since the Bank declined to complete if the amount of the arrears of tax was deducted from the purchase price.

10 16. Of the said sum of \$521,242.53, \$17,138.96 represented the tax in respect of the period from completion to 30th June 1981. The remaining amount, namely \$504,103.59, has been duly paid to the Respondents by the Bank out of the surplus of the proceeds of sale remaining after satisfaction of the Bank's claim in accordance with an order of the Learned Chief Justice made on 9th May 1980 in separate proceedings brought by the Respondents against both the Bank and the Appellant. No appeal has been made against this Order.

20 17. The Appellants thereafter appealed from the first order of the Learned Chief Justice. The Court of Appeal saw no reason to interfere with that Order. They also did not construe Clause 16 (c) but held that:

p.90
p.99
11.14-15

(a) Clause 16 could not avail the Appellants since they were not parties to the contract between the Bank and the Respondents;

p.98
11.14-22

(b) in any event Clause 16 was one of the general standard clauses found in a tender document when an owner offers his property for sale and had no application to sale of property by a mortgage;

p.98
11.21-24

30 (c) the principal liability to pay the arrears of tax was that of the Appellants. The Respondents had only paid those arrears in order to free the property from the Comptroller's charge;

p.98 1.43-
p.99 1.14

40 (d) since there would be a surplus of the proceeds of sale after satisfaction in full of the Bank's claims, which surplus the Bank held as trustee for the Appellants, justice demanded that the Respondents should be entitled to be reimbursed out of that surplus in the amount of the tax which they had paid, and that therefore they were subrogated to the rights of the Comptroller or the Appellants, to the extent of the amount of tax paid, in the said surplus of the proceeds of sale;

p.99
11.4-11

(e) that, in practical terms, the Respondents were entitled to deduct the amount of tax paid from the purchase price before handing over the purchase price to the Bank.

p.99
11.11-14

Record

18. The Respondents will respectfully submit that the Judgment of the Court of Appeal was correct because:

- (i) primary liability for the payment of the arrears of tax was upon the Appellants, who had indeed been in default over about 3 years.
- (ii) Until the arrears were paid, the property of the Respondents remained liable to be sold by the Comptroller. 10
- (iii) Payment by the Respondents had discharged the liability of the Appellants, who had thus benefited by, and to the extent of, such payment.
- (iv) It was therefore just that the Appellants, rather than the Respondents, should bear the cost of discharging the arrears, and that the Respondents should be entitled to be reimbursed and indemnified by the Appellants. 20
- (v) The Appellants were not a party to the contract of sale made between the Bank and the Respondents and therefore could not rely upon Clause 16(c) of that contract (whatever its true construction) to alter or affect the position between the Appellants and the Respondents.
- (vi) The Learned Chief Justice was therefore right in ensuring that cost of paying the arrears of tax came out of the purchase price of the property and was borne by the Appellants. 30

19. The Respondents will, if necessary, further contend that on its true construction Clause 16(c) of the Conditions of Tender does not cover or include the charge of the Comptroller for arrears of Property Tax which were overdue before the property was ever offered for sale; alternatively that it does not affect or alter the primary liability and responsibility of the Appellants to pay, and to bear the cost of paying, such arrears. 40

20. The Appellants addressed arguments to the Court of Appeal upon the nature and applicability of subrogation. But such arguments were, and in this appeal are, of no, or no practical, relevance or significance.

The situation was, and is, that the

Respondents have completed the purchase of the property; have discharged the arrears of property tax and have received reimbursement of the amount of the arrears. The only remaining question is whether or not the Appellants have any right to receive and recover from the Respondents a further sum of money of an amount equal to the arrears of tax so reimbursed.

10 21. The Respondents respectfully submit that this appeal should be dismissed with costs for the following among other

R E A S O N S

- (1) BECAUSE the Judgment of the Court of Appeal, and the reasoning thereof, was correct;
- (2) BECAUSE the said Clause 16 of the Conditions of Tender did not impose any liability upon the Respondents to pay the said arrears of tax;
- 20 (3) BECAUSE any liability imposed by the said Clause 16 was a liability only as between the Bank and the Respondents and not between the Appellants and the Respondents;
- (4) BECAUSE the Appellants were the party primarily liable to pay the said arrears of tax to the Comptroller;
- (5) BECAUSE the Respondents, by paying the said tax, discharged a liability which was primarily that of the Appellants and were thus entitled to be reimbursed or
30 indemnified in respect thereof;
- (6) BECAUSE the Respondents were entitled in equity to be paid the amount of the tax paid by them to the Comptroller out of the surplus of the proceeds of sale of the property after the discharge in full of the Appellants' indebtedness to the Bank.

BLEDISLOE
M. BRINDLE

