

Chileon Pte Ltd v Choong Wai Phwee and Others (Trustees of Cheng Liam Um Vegetarian Temple)
[2001] SGCA 14

Case Number : CA 105/2000
Decision Date : 07 March 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Quek Mong Hua and Adeline Foo (Lee & Lee) for the purchasers; Foo Maw Shen, Keoy Soo Khim and Ng Wai Hong (Ang & Partners) for the trustees
Parties : Chileon Pte Ltd — Choong Wai Phwee and Others (Trustees of Cheng Liam Um Vegetarian Temple)

Charities – Charitable trusts – Power of trustees to sell property – Lack of express power of sale – Statutory power of Commissioner of Charities authorising sale – Whether order issued by Commissioner for purpose of sale of property could pass good title to property – s 30 Charities Act (Cap 37, 1995 Ed)

Equity – Estoppel – Equitable estoppel – Whether purchasers estopped from rescinding sale and purchase agreement-Specific performance

Words and Phrases – "Any action proposed or contemplated" – s 30(1) Charities Act (Cap 37, 1995 Ed)

(delivering the judgment of the court): This is an appeal against the decision of GP Selvam J, in which he ordered that the sale and purchase agreement dated 30 November 1999 made between the appellants and the respondents for the sale of the property, No 26 Shanghai Road, be specifically performed and carried out.

Background

The dispute between the parties arose from an en bloc sale and purchase of nine parcels of land known as Nos 22, 26, 28, 30, 32, 34 and 36 Shanghai Road and Lots 25N and 958L of TS 24, Shanghai Road (collectively referred to as `the Shanghai Road properties`). By separate agreements made with the respective owners of these properties (collectively referred to as `the vendors`) on 30 November 1999, the appellants agreed to purchase all these properties. All the sale and purchase agreements contained identical terms and conditions in all material respects, and the aggregate purchase price of all the properties came to \$23.8m.

One of the properties, No 26 Shanghai Road (`the Property`), houses a temple known as Cheng Liam Um Vegetarian Temple (`the temple`), and the legal owners are the trustees of the temple. This property was conveyed to the trustees for the time being of the temple on 19 July 1927 upon the following trusts:

... To Hold the same unto the Trustees in fee simple Upon Trust to manage the said land and premises and permit the same to be occupied for the purposes of the Cheng Liam Um Vegetarian Temple and if not so occupied to let the same and to receive the rents profits and income thereof and pay and apply the same to the use and benefit of the said Cheng Liam Um Vegetarian Temple and the members thereof.

The respondents are the present trustees of the temple, and they were the ones who entered into the sale and purchase agreement with the appellants with respect to the Property (‘the sale and purchase agreement’).

The sale and purchase agreement provided for a completion date falling on 21 March 2000. It also provided that the completion date would be extended by a further eight weeks, without any interest being charged on the purchase price, if the sale and purchase of all the Shanghai Road properties could not be completed simultaneously. The extended completion date fell on 16 May 2000.

On 20 March 2000, the solicitors for the appellants at that time, M/s David Ong & Partners (‘David Ong’), discovered that the trust instrument for the temple contained an express power of letting but not of sale. As a result of this absence of a power of sale, the completion of the sale and purchase did not take place on 21 March 2000, the initial completion date, and the completion was extended to 16 May 2000. On 23 March 2000, the solicitors retained by the vendors, M/s Rodyk & Davidson (‘Rodyk’), applied to the Commissioner of Charities (‘the Commissioner’) for an appropriate order under s 30 of the Charities Act (Cap 37, 1995 Ed) (‘the Act’) to enable them to sell the Property. On 31 March 2000, the Commissioner granted an order (‘the s 30 order’) authorising the respondents to:

(1) sell the property known as Cheng Liam Um Vegetarian Temple at 26 Shanghai Road, Singapore 248195 to Chileon Pte Ltd; and

(2) pay all expenses in relation to the sale out of the sale proceeds; and

(3) apply the balance of the sale proceeds towards the purchase of an alternative property for the use and benefit of the Temple and its members.

The s 30 order was transmitted by Rodyk to David Ong on 4 April 2000. Apparently, David Ong found this order acceptable and confirmed that the completion date had been extended to 16 May 2000 and requested Rodyk to lodge the s 30 order with the Registry of Deeds and to provide them with the registration particulars as soon as possible. However, they later informed Rodyk that the appellants’ mortgagees found that the s 30 order was inadequate and that they required the s 30 order to be amended (i) to state that the sale and purchase agreement was ratified retrospectively, and (ii) to include a reference to the conveyance to be executed. Rodyk replied on the same day, 5 April 2000, stating their view that the amendments were unnecessary and that the Commissioner was prepared to give a letter of confirmation clarifying the points raised by the appellants’ mortgagees.

On 6 April 2000, M/s Lee & Lee (‘Lee & Lee’), representing the appellants’ mortgagees, informed David Ong and Rodyk that the s 30 order was not only inadequate but also inappropriate, because the Commissioner should have made an order pursuant to s 24 of the Act instead of s 30. Rodyk replied on the same day, taking the stand that the s 30 order was sufficient and that an order under s 24 was unnecessary.

Under s 24 of the Act, the Attorney General’s consent was necessary before the Commissioner could exercise his powers. After various discussions and correspondences, the parties agreed that Lee & Lee would write to the Attorney General to seek his consent for an order under s 24 to be made. Accordingly, a request was made to the Attorney General and on 28 April 2000, the Attorney General gave his consent.

Despite this, as of 5 May 2000, the Commissioner stood firm on his stand that the s 30 order was sufficient and that an order under s 24 was unnecessary. However, the Commissioner was willing to meet with the parties on 6 May 2000 to discuss the matter. From the correspondence passing

between Rodyk and Lee & Lee it appeared that the appellants' representatives were not able to attend the meeting on 6 May 2000 or on subsequent days of the week. Eventually, a meeting was scheduled for 13 May 2000. That was a Saturday, and under the sale and purchase agreement the date of completion was 16 May 2000 which was a Tuesday. As the learned judge said, as from the day of that meeting the parties had only one working day to resolve the outstanding problem.

Be that as it may, the parties met with the Commissioner on 13 May 2000 and the Commissioner maintained his original stand. Lee & Lee said that they would take their clients' instructions and respond by 16 May 2000 whether their clients were prepared to take a commercial decision and accept the s 30 order together with a letter of confirmation from the Commissioner. On 16 May 2000, Lee & Lee confirmed to Rodyk and the Commissioner that their clients, the appellants' mortgagees, would not proceed unless an order under s 24 was obtained.

On 17 May 2000, David Ong on behalf of the appellants rescinded the sale and purchase agreement on the ground that the date of completion (that is, 16 May 2000) had elapsed. They also similarly rescinded the other agreements made with the vendors of the remaining Shanghai Road properties. On the same day, the Commissioner agreed to compromise and issued an order under s 24 of the Act. Unfortunately the order did not help to resolve the dispute, as by then the appellants had rescinded the agreements and were not prepared to withdraw the rescission.

By OS 764/2000, the respondents sought a declaration that the appellants were in breach of their obligation to complete and sought an order of specific performance against them. The other vendors also took similar proceedings against the appellants. They applied by OS 763/2000 for similar reliefs. As a counter measure, the appellants commenced an action in Suit 335/2000 against all the vendors for the return of the deposit of \$2.38m. The action was held back, pending the hearing of the two originating summonses. The dispute in all these proceedings centred on the sufficiency of the s 30 order for the purpose of the sale of the Property. The summonses were heard before GP Selvam J (see [2000] 4 SLR 340), and he allowed the applications and granted the order sought to the respondents and the other vendors.

The decision below

The judge held that there was a valid and enforceable sale and purchase agreement made with respect to the Property. It was not void, but voidable at the instance of the beneficiary if it was shown to be not beneficial to the charity. However, in this case the sale was eminently beneficial to the charity.

The judge held that the s 30 order issued by the Commissioner was valid. It was prospective in operation in that it authorised the sale which had not been completed, and by necessary implication it authorised the execution of the conveyance. There was nothing to ratify because the sale and purchase agreement was valid and binding in the first place.

Therefore, the judge held that the respondents were ready, able and willing to complete the sale from the time the appellants were given sight of the s 30 order. The appellants were therefore in breach of their obligation to complete and the respondents were entitled to an order for specific performance.

In addition, the judge held that the principle of equitable estoppel also applied. The vendors allowed the appellants to supplicate the Commissioner to issue a new order under s 24, without prejudice to their position that the s 30 order was sufficient. At the meeting with the Commissioner on 13 May 2000, in which the representatives of all the parties were present, it was agreed that Lee & Lee

would respond by 16 May 2000 with their clients' instructions on whether they were prepared to accept the s 30 order together with a letter of confirmation from the Commissioner. In the event that they were not agreeable, the Commissioner would review the matter and consider if a s 24 order would be issued. The implication arising from this was that once Lee & Lee responded on 16 May 2000 that their clients would not proceed unless an order under s 24 was obtained, the appellants would not withdraw from the sale until the Commissioner was given the opportunity to reconsider the matter. By agreeing that Lee & Lee would inform the Commissioner of the mortgagees' decision on 16 May 2000 (which was the completion date), they must, by necessary implication, have agreed to a reasonable extension.

The judge further held that the Commissioner reconsidered the matter well within the reasonable time and obliged the appellants and their mortgagees with the order under s 24. Therefore, by virtue of the principle of equitable estoppel, the sale and purchase agreement was not validly rescinded and continued to subsist. The appellants were therefore bound to honour their agreement.

The appeal

At the time this appeal was filed, the order appealed against was one for specific performance of the sale and purchase agreement. However, before the hearing of this appeal, the respondents had obtained a variation of the order, which gave them liberty to proceed with a resale of the Property and awarded them damages to be assessed. The variation made to the order does not affect the outcome of this appeal.

Before us, there are two main issues for consideration: first, whether the respondents were in a position to give a good title to the Property by reason of the s 30 order on the extended date of completion, namely, 16 May 2000, and second, whether the appellants were estopped from rescinding the contract as they did on 17 May 2000.

The first issue turns essentially on whether the s 30 order issued by the Commissioner was sufficient to enable the respondents to pass a good title to the Property. On this point, the appellants' contention is that the s 30 order was inadequate, because s 30 of the Act is intended to operate prospectively whereas in the present case, the sale had already been transacted in the sense that the sale and purchase agreement had been executed. For the purpose of the transaction, the appropriate section is s 24 which confers on the Commissioner concurrent jurisdiction with the High Court in charity proceedings. The transaction having taken place, the High Court in exercise of its inherent jurisdiction would be prepared, in the circumstances, to allow a retrospective sanction of the sale. Section 24 is therefore eminently more appropriate for allowing the Commissioner to sanction the sale retrospectively.

On the other hand, the respondents' contention is that at common law trustees of a charity have the power to alienate charity land, notwithstanding the absence of such power in the trust instrument constituting the charity. The exercise of such power is subject to the equity of the beneficiaries to challenge the transaction on the ground that it was not for the benefit of the charity. The purchasers could be assured against such challenge by an order from the Commissioner under the Charities Act. In this case, the s 30 order issued by the Commissioner fulfilled this function: it authorised the sale of the Property and by authorising the sale the Commissioner in effect authorised the execution of the conveyance or transfer of the Property.

Power of the trustees

It is common ground that the respondents as the trustees of the temple have no express power under the trust instrument to sell the Property. It is also common ground that the position at common law is that charity trustees have the power to sell trust property, whether or not such sale is authorised by the trust instrument, as long as such a sale is for the benefit of the charity and is not in breach of trust. In England, this common law power has been superseded by statute and under the English Charities Act, charity trustees are not allowed to dispose of any landed property without an order of the court or the charity commissioner. However, this statutory prohibition does not apply in Singapore as it is not provided for in our Act. As such, the position at common law has not been altered in Singapore.

That being the case, the sale and purchase agreement of 30 November 1999 was not void. Indeed, it was valid and binding, but subject to the beneficiary`s equity. The beneficiary could challenge the sale on the basis that it was not for the benefit of the temple. In this case, as the judge found and we agree, the sale of the Property was eminently for the benefit of the charity. However, the appellants as the purchasers were entitled to require that an authorisation of the sale be obtained from the court or the Commissioner so as to ensure that the respondents could pass a good title to the Property on completion.

Authorisation under s 30

The respondents on 31 March 2000 obtained the s 30 order from the Commissioner and the question is whether that order would enable the respondents to pass a good title to the Property to the appellants. We turn first to consider the provisions of s 30 of the Act. In so far as material, s 30 provides:

(1) Subject to this section, where it appears to the Commissioner that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, he may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of that order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1)) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.

It is not in dispute that the Commissioner may by an order under s 30 authorise a transaction such as a sale of the property held in trust for a charity, where the sale and purchase agreement has merely been proposed or is then in contemplation but has not as yet been made. That, however, was not the position in the instant case. Here, the sale and purchase agreement of the Property was made prior to the issue of the s 30 order by the Commissioner and the question is whether the Commissioner was empowered under s 30 to authorise such a sale at that time. The contention made on behalf of the appellants is anchored on the words `any action proposed or contemplated` in s 30(1), and the essence of the contention is that having regard to these words the Commissioner, at the time he

issued the order, was not empowered under that section to authorise the sale, as the sale had already been made. In other words, an order under s 30 can only authorise a transaction prospectively; it cannot authorise a transaction retrospectively. It follows that the Commissioner has no power under that section to ratify a transaction that has been made; he can only authorise a transaction which is to be made in the future. Thus, the s 30 order was inadequate for the purpose of authorising the sale of the Property.

We agree that in view of the words `any action proposed or contemplated` in s 30(1), the Commissioner is not empowered to issue an order ratifying a transaction retrospectively. On the other hand, we do not agree that the power of the Commissioner under s 30 is confined to authorising **only prospectively** a transaction which is to take place. Such a construction leaves a lacuna with reference to a transaction which is current and in the course of being carried out. It is far too narrow and restrictive a construction to serve any useful or practical purpose, bearing in mind that s 30(1), by its express terms, is intended to empower the Commissioner to authorise an `action` in the `administration of the charity`, where it is expedient in the interest of the charity. It should also be borne in mind that under s 30(2) `an order may be made so as to authorise a particular transaction, compromise or the like, or a particular application of the property`. The words `any action proposed or contemplated` in s 30(1) have to be construed in the context of s 30 read as a whole. We think that the words `proposed` and `contemplated` in the context of s 30 are not synonymous and are not intended to be used interchangeably. While the word `proposed` quite clearly refers to an action or a transaction which is expected by the parties to be carried out, the word `contemplated` has a broader meaning and refers to an action or a transaction which the parties have in mind, including an action or a transaction which is in the course of being carried out. In other words, s 30 empowers the Commissioner to authorise not only an action or a transaction prospectively, ie to be carried out in the future, but also an action or a transaction **currently**, ie in the course of being carried out.

Reverting to the facts in this case, it is true that at the time when the s 30 order was issued the sale and purchase agreement had already been made. In that sense, it may be said that the sale had been made. But the transaction of sale comprises the entire process originating from the execution of the sale and purchase agreement to the completion by the execution of the transfer or conveyance of the Property. At the time when the s 30 order was issued, the sale was still current and extant and was in the course of being completed. In our view, the transaction that was under consideration by the Commissioner at the material time, and that was subsequently authorised by him under the s 30 order, was the entire transaction of the sale of the Property, and not merely the instrument whereby the sale was made, namely, the sale and purchase agreement, as claimed by the appellants. That was the transaction then in contemplation, and that was the transaction authorised by the s 30 order.

The appellants rely on **Milner v Staffordshire Congregational Union (Inc)** [1956] Ch 275. In that case, the trustees of a charity agreed to sell to a purchaser a certain trust property and pursuant to the agreement a deposit was paid to the trustees. The consent of the Charity Commissioners to the sale was not obtained by the trustees at the date of the agreement, and the purchaser was then told that the sale was subject to such consent. Subsequently, the purchaser considered that he was not bound by the agreement, as the consent of the Charity Commissioners had not been obtained in accordance with s 29 of the Charitable Trusts Amendment Act 1855, and he repudiated the agreement. However, after that the consent from the Charity Commissioners was obtained. The purchaser sought to recover the deposit. It was held that, since it was a breach of s 29 for the trustees to enter into the contract without the approval of the Charity Commissioners, the contract so entered into was not lawful, and was not binding on the purchaser. Accordingly, the purchaser was held entitled to recover the deposit. Danckwerts J said at pp 281-282:

I have to decide what that Act means when it says: "make a sale." It does not say "make a conveyance" or "complete a sale" or anything of that sort; it simply says "make any sale," and I think for the purposes of the section, though I am bound to say that the matter is not free from doubt, that a sale is made when a contract is entered into by the owners of the property in question for the sale of the property to some purchaser. It is therefore a breach of the terms of the section if a body of charitable trustees enters into a contract to sell the trust property without the authority of the Charity Commissioners.

In our view, that case is clearly distinguishable from the present case. There, the Charity Trusts Amendment Act 1855 of the United Kingdom rendered it unlawful for charity trustees to enter into a contract of sale without the requisite authorisation. In that context, any contract of sale made by charity trustees without such authorisation was unlawful, and the agreement for sale was void by reason of the statutory prohibition, unless prior authorisation was obtained. However, there is no equivalent provision in our Charities Act; the Act does not prohibit charity trustees from entering into a contract of sale of charity property. The respondents did not require any express authority to enter into a sale and purchase agreement. What they required, however, was an authorisation for the transaction as a whole to ensure that they could pass good title to the appellants on the completion date.

It is also instructive to look at **Manchester Diocesan Council for Education v Commercial and General Investments** [1969] 3 All ER 1593[1970] 1 WLR 241. There, certain school premises were vested in the plaintiff by reason of a scheme framed by the Minister of Education in 1962 under the Endowed Schools Acts 1869-1948, and under the provisions of the scheme the plaintiff was authorised to sell any of the premises, subject to the sale price thereof being approved by the Minister of Education. The plaintiff invited tenders for the purchase of the school and the defendants submitted a tender for the purchase of the property, which tender was accepted. Thereafter, the purchase price of the property was approved by the Minister of Education. The plaintiff subsequently purported to withdraw the tender. One of the issues raised was whether the contract was validly made by reason of the fact that the Minister's approval of the price came after the tender was accepted. It was held that the power to complete the sale was conditional on the approval of the price but the power to enter into the contract for sale was not. The fact that the approval of the price was obtained later did not prevent a valid and binding contract from being made. Buckley J said ([1969] 3 All ER 1593 at 1598; [1970] 1 WLR 241 at 247):

*But it is said that cl 4 of the 1962 scheme conferred only a conditional power of sale and that ministerial approval was necessary before a contract of sale could be made. Reliance is placed on **Milner v Staffordshire Congregational Union (Inc)** [1956] Ch 275[1956] 1 All ER 494 where it was held that it was unlawful for charity trustees to enter into a contract of sale under the Charitable Trusts Amendment Act 1855, s 29, without the prior approval of the charity commissioners. In my judgment, that case is clearly distinguishable from the present case. Section 29 of the Act of 1855 expressly makes any sale by charity trustees - ie any contract for sale - unlawful unless it is made with the approval of the commissioners. The power to contract is conditional on prior approval. The requirement of cl 4 of the 1962 scheme in the present case is quite different. By that clause the governing body is authorised to sell property comprised in the scheme but any sale - ie any contract for sale - is required to be conditional on ministerial approval of the price being obtained. The power to complete a sale is conditional on prior approval, but not the power to contract. The fact that ministerial approval was not obtained until 18th November 1964 does not, in my judgment, invalidate the contract, if any, made on 15th September.*

Before we depart from our decision on s 30, we need to say a word on s 24 of the Act which is heavily relied upon by the appellants. In so far as material, s 24 provides:

(1) Subject to the provisions of this Act, the Commissioner may, with the consent of the Attorney-General, by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes:

(a) establishing a scheme for the administration of a charity;

(b) appointing, discharging or removing a charity trustee or trustee for a charity, or removing an officer or employee; and

(c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.

Looking at the subsection as a whole, we have some doubts as to whether it is an appropriate provision to be invoked for the purpose of authorising the sale of the Property. Paragraphs (a) and (b) of this subsection certainly have no application. We also do not think that para (c) is really applicable. Read with the preceding words in s 24(1), all that para (c) provides is that the Commissioner may exercise certain powers for the purpose of `vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment`. The Commissioner in this case was not asked to exercise any power to vest any property in or transfer it to anyone. He was asked only to authorise a sale of a charity property. Therefore, it does not seem to us that s 24(1) is an appropriate provision under which the Commissioner may authorise a transaction such as the sale of the Property. However, even assuming that s 24(1)(c) is an appropriate provision, it does not displace the relevance of s 30. In that event, all that can be said is that, in relation to the sale of the Property, the two sections overlap. In this regard we agree with the following observations made by the judge at [para] 46:

46. ... It is true that under s 30 the Commissioner may only make a prospective order. The position is not any different under s 24 - for the power under s 24 is also prospective: to make an order to make a transfer. It does confer the power to sanction or rectify what has been done. By authorising the trustees to sell the Commissioner is in effect authorising the trustees to execute the conveyance. ... That is also the position under s 24. What is vital is that the end result is the same under both sections.

In our judgment, the s 30 order issued by the Commissioner was sufficient to enable the respondents to pass a good title of the Property to the appellants. The appellants were therefore in breach of their obligations to complete the sale.

Estoppel

Our decision on the first issue is sufficient to dispose of the appeal. For completeness, we should deal also with the second issue, as arguments have been raised by both parties. This issue turns on what actually transpired at the meeting with the Commissioner on 13 May 2000. In this regard, the judge relied on the contents of the affidavits of Sek Miew Tek and Saechang Pilak affirmed and filed on behalf of the respondents. In their affidavits, it was stated that all parties at the meeting agreed that Lee & Lee would revert by 16 May 2000 with the instructions of the appellants' mortgagees and in the event that the mortgagees were still not agreeable to accepting the s 30 order, then the Commissioner would review the matter and consider if he would issue an order under s 24. It was further stated that neither the appellants nor their solicitors indicated that the appellants were reserving their right to rescind after 16 May 2000 and in fact, the appellants' representative confirmed at the meeting that they were prepared to complete the sale as long as their lenders did not withdraw.

On the other hand, the affidavits of Andrew Tan Kheng Hwee and Awyong Leong Hwee, affirmed and filed on behalf of the appellants, made no mention of any agreement that the Commissioner would review the matter in the event that the mortgagees were still not agreeable to accepting the s 30 order by 16 May 2000. Their version was that the appellants' representative indicated that they were prepared to complete the sale if the respondents could pass good title, which in their solicitor's opinion would require an order under s 24, and that it was the concern of everyone that completion was scheduled on 16 May 2000.

It seems to us that probably there was an understanding between the parties at the end of the meeting of 13 May 2000 that Lee & Lee would revert by 16 May 2000 as to whether the appellants' mortgagees would agree to proceed without an order under s 24, and if they did not agree, then the Commissioner would reconsider the matter. The Commissioner apparently was under the impression that he would be given an opportunity to reconsider the matter because that was what he actually did. The Commissioner would not be issuing an order under s 24 on 17 May 2000, if he felt that the appellants were insisting strictly on 16 May 2000 as the final completion date.

It was accepted by all parties, including the appellants, that the Commissioner would reconsider the matter in the event that Lee & Lee reverted with a negative reply from their clients on 16 May 2000. There was certainly no objection from the parties to Lee & Lee reverting only by 16 May 2000. If the appellants had intimated that they were insisting strictly on the contractual completion date of 16 May 2000, then the parties would have insisted that Lee & Lee revert by 15 May 2000 so as to allow a bit of time for the Commissioner to reconsider his decision in the event that the mortgagees would not proceed without an order under s 24.

On the relevant conduct of the parties, the judge found as follows:

57. ... The effect and implication of the conduct of the purchasers and the finance companies was that they would not withdraw until the Commissioner was given the opportunity to reconsider the matter after hearing from Lee and Lee on 16 May 2000 the decision of the finance companies. That was why they left it to Lee and Lee to secure an order under s 24. In the circumstances, it was a reasonable and legitimate understanding that the Commissioner would be given a reasonable opportunity because the purchasers treated with the Commissioner without declaring that they would rescind the agreement. In fact they declared that they would complete as long as the lenders did not withdraw. By saying that they would inform the Commissioner of the decision on the completion day they must have by necessary implication agreed to a reasonable extension. The Commissioner well within the reasonable time

reconsidered the matter and obliged the finance companies and the purchasers with the Order they asked for.

We agree entirely with the judge.

Conclusion

For the reasons given, the appellants acted in breach of their obligations in rescinding the sale and purchase agreement. In the result, their appeal is dismissed with costs. The deposit as security for costs, with interest, if any, is to be paid to the respondents or their solicitors to account of costs.

Outcome:

Appeal dismissed.

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