IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 1

Originating Summons No 1092 of 2021

Between

Wingcrown Investment Pte Ltd

… Plaintiff

And

Mannepalli Gayatri Ram

… Defendant

GROUNDS OF DECISION

[Damages] — [Assessment]

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Wingcrown Investment Pte Ltd
v
Mannepalli Gayatri Ram

[2023] SGHC 1

General Division of the High Court — Originating Summons No 1092 of 2021
See Kee Oon J
19 July, 27 October 2022

3 January 2023

See Kee Oon

Introduction

1 The plaintiff's claim in HC/OS 1092/2021 ("the OS") was brought in relation to a sale and purchase agreement dated 2 July 2018 ("the SPA") that was entered into between the parties in respect of a condominium unit ("the Property") at 105 Prince Charles Crescent, The Crest, Singapore 159019 ("the Development").

2 The plaintiff and defendant were the vendor and purchaser respectively of the Property. The plaintiff was also the developer of the Development. Following the defendant's failure to complete the sale and purchase of the Property, the plaintiff commenced the OS to recover possession of the Property and claim damages. The plaintiff obtained a declaration in the General Division of the High Court that the SPA was validly terminated on 17 August 2021. The

hearing before me was concerned solely with the issue of how damages were to be assessed ("the AD hearing"). The plaintiff estimated that the quantum of damages it would be entitled to would exceed $500,000.

3 I assessed that the plaintiff was entitled to damages amounting to $720,960.84. The defendant has appealed and I now furnish the full reasons for my decision, incorporating the oral remarks which I had previously delivered.

Background and procedural history

4 The background facts are not controversial. The chronological sequence of the key events is set out in the plaintiff's written submissions which were filed at the conclusion of the hearing.[1]

5 The SPA arose from the defendant's intended purchase of the Property for the agreed sale price of $3.089m. An Option to Purchase ("OTP") was issued by the plaintiff to the defendant on 4 June 2018. On payment of the option fee of $308,900, being 10% of the sale price of the Property, the defendant exercised the OTP on 2 July 2018 and the parties entered into the SPA.

6 Pursuant to cl 1 of the SPA, the sale and purchase was scheduled for completion on 4 June 2020. Prior to completion, the defendant was allowed to take early possession of the Property from 27 July 2018. However, completion did not take place even after several extensions of the scheduled completion date. The defendant made nine requests for extension of time since April 2020.

7 On 26 July 2021, the plaintiff's solicitors ("Dentons") gave notice to the defendant pursuant to Condition 15 of the Law Society Conditions of Sale 2012

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1 Plaintiff's Written Submissions ("PWS") dated 15 August 2022 at paras 1 to 18.

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(the "LSS Conditions") to complete the sale and purchase of the Property by 16 August 2021, in accordance with the terms of the SPA (the "Notice to Complete"). On 18 August 2021, as the defendant did not meet the deadline stipulated in the Notice to Complete, Dentons notified him that the SPA had been terminated on 17 August 2021 and that the plaintiff was entitled to exercise all its rights under cl 5A.2.3 of the SPA and Condition 15 of the LSS Conditions. The plaintiff requested the defendant to deliver up possession of the Property as soon as possible and in any event no later than 4pm on 20 August 2021. The 20 August 2021 deadline was subsequently extended to 8 October 2021.

8 After having already been given an extension of the initial 20 August 2021 deadline, the defendant still did not deliver up possession of the Property by 8 October 2021. Hence, the defendant was informed on 8 October 2021 that the plaintiff would commence legal proceedings. On 26 October 2021, the plaintiff commenced the OS seeking, *inter alia*, a declaration that the SPA had been validly terminated on 17 August 2021 and an order for the defendant to deliver up possession of the Property in accordance with the terms and conditions of the SPA.

9 On 18 January 2022, the General Division of the High Court declared that the SPA was validly terminated on 17 August 2021. By way of an Order of Court (HC/ORC 368/2022), it was further ordered that:

(a) the plaintiff is entitled to enter into possession of the Property;

(b) the defendant shall deliver possession of the Property to the plaintiff in accordance with the terms and conditions of the SPA within one month from the date of the order;

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(c) the defendant shall pay to the plaintiff all outstanding maintenance charges due in respect of the Property and late payment interest at 12% per annum thereon with the quantum to be assessed by the Court together with the other forms of damages to be assessed;

(d) the defendant shall pay to the plaintiff damages arising from the defendant's breach of contract to be assessed by the Court;

(e) the defendant shall pay to the plaintiff interest on the damages assessed by the Court; and

(f) the defendant shall pay to the plaintiff costs of $7,500 being the costs of the application inclusive of disbursements.

10 The defendant did not adhere to the one-month deadline stipulated by the Court for the delivery of possession of the Property. Instead, the defendant applied on 24 February 2022 in HC/SUM 740/2022 ("SUM 740") to seek an extension of time to 27 February 2022 to comply with the order to deliver up possession of the Property.

11 The Court granted the application in SUM 740 on 25 February 2022 with costs to the plaintiff. The defendant was also found liable for the necessary costs of the handover (including any overtime expenses of the plaintiff's staff), and costs arising from the plaintiff's attempts to take possession of the Property prior to the date of the hearing, the quantum for which would be decided at the AD hearing.

12 The defendant delivered up possession of the Property to the plaintiff on 27 February 2022. The plaintiff alleged that, in breach of its obligations under the SPA, the defendant had failed and/or refused to reinstate and restore the

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Property to its original state and condition as at 30 July 2018, the date of vacant possession as defined in the SPA ("Vacant Possession Date"). The plaintiff hence engaged several contractors to carry out reinstatement works before proceeding to market and sell the Property.

13 On 31 May 2022, the plaintiff issued another purchaser (the "Replacement Purchaser") an Option to Purchase (the "New OTP"). The Replacement Purchaser duly exercised the New OTP. Completion of the sale of the Property to the Replacement Purchaser had taken place by the time I delivered judgment on 27 October 2022.

14 The parties relied on the evidence of one witness each in the AD hearing, namely the defendant and Mr Koh Chin Beng ("Mr Koh"), who testified as the plaintiff's sole witness. Mr Koh was a senior sales manager of Wing Tai Property Management Pte Ltd, which was appointed by the plaintiff to provide, *inter alia*, marketing services to the plaintiff in respect of the units in the Development.

The plaintiff's claim

15 The breakdown of the amounts claimed by the plaintiff is set out as follows,[2] alongside the defendant's position in response:

S/N	**ITEM**	**QUANTUM (Plaintiff's position)**	**QUANTUM (Defendant's position)**
1	Management fund charges and late payment interest	$6,337.79	Undisputed
2	Property tax	$3,701.91	Undisputed

2 Based on PWS para 19.

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3	Legal costs	$100,268.37	Disputed as to indemnity costs
4	Costs of reinstatement works	$103,915.48	Disputed – quantum to be reduced
5	Costs arising out of the plaintiff's attempts to take over possession of the Property and eventual taking over possession of the Property	$1,845.85	Undisputed
6	Damages for the delayed sale and purchase of the Property	$286,962.27	Disputed as to double rent and set-off
7	Interest on shareholders' loan	$168,709.33	Disputed
8	Unnecessary expenses	$100,981.64	Disputed
	Total	**$772,722.64**	

16 Of these eight heads of claim as tabulated above, the defendant did not dispute the three lowest-valued claims (Items 1, 2 and 5) totalling just below $12,000. This was the only inference open to me since nothing was said in the defendant's written submissions and reply submissions[3] in relation to these three claims. I saw no reason to disallow these claims. The other five claims (Items 3, 4, 6, 7 and 8) were disputed ("the disputed claims").

Issues to be determined

17 The defendant's affidavit of evidence-in-chief contained various allegations of the plaintiff's harassment, hostility and animosity towards him, after he had been informed of the plaintiff's intention to terminate the SPA.[4]

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[3] Defendant's Submissions dated 15 August 2022 ("DS") and Defendant's Reply Submissions dated 27 September 2022 ("DRS").

[4] Affidavit of Evidence-in-Chief of Mannepalli Gayatri Ram dated 17 June 2022 ("Defendant's AEIC"), eg. at paras 12, 15, 22, 24, 28, 29 and 30.

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The defendant also mentioned his family's personal circumstances including the stress and anxiety he and his family had experienced throughout the relevant period leading up to their vacating the Property.[5] While I empathised with the defendant's predicament resulting from the unfortunate turn of events, I was unable to give weight to any of these considerations in assessing the appropriate measure of damages.

18 At the outset, I should point out that much of the background facts in the parties' respective affidavit evidence and oral testimony were material to the AD hearing only for a contextual understanding of the disputed claims, given the Court's prior finding on 18 January 2022 that the plaintiff had validly terminated the SPA. The plaintiff was only enforcing its contractual entitlement to its legal rights. The totality of the background facts demonstrated that the plaintiff had granted the defendant considerable latitude for a substantial duration, including allowance for multiple extensions of the scheduled completion date well beyond 4 June 2020. Moreover, the defendant had been in possession of the Property since July 2018 for some 43 months before he eventually delivered up possession on 27 February 2022.

19 The AD hearing before me was to determine the appropriate quantum of damages to be awarded to the plaintiff. The issues to be determined therefore pertained to whether the plaintiff had proved its entitlement to the sums in the disputed claims, *viz*:

(a) legal costs quantified at $100,268.37;

(b) costs of reinstatement work quantified at $103,915.48;

5 Defendant's AEIC at paras 16 and 17.

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(c) damages for the delayed sale and purchase of the Property quantified at $286,962.27;

(d) interest on shareholders' loan quantified at $168,709.33; and

(e) unnecessary expenses quantified at $100,981.64.

20 As the legal principles pertaining to the award of compensatory damages for contractual breaches are well-settled, I do not propose to elaborate on them. It will suffice to note that the defendant had framed the broad issues to be determined as being questions of remoteness of damage and causation.[6] Where relevant and necessary, I will touch on the legal principles for specific claims in question in due course.

Item 3 – Legal costs: S$100,268.37

21 With respect to the claim for legal costs in Item 3, the plaintiff based its claim on cl 5A.2.3 of the SPA which provides:

> In the event that the [defendant] breaches any conditions set out in Clause 5A.2.1 or if the sale and purchase of the Property is not completed for any reason whatsoever on the Completion Date or if this Agreement is terminated pursuant to Clause 5.4, without prejudice to any other rights or remedies which may have accrued in the [plaintiff's] favour:-
>
> …
>
> (b) … the [defendant] shall indemnify the [plaintiff] from and against all claims, actions, liabilities, demands, legal proceedings, damages, losses, *costs and expenses (including all legal and other costs, charges and expenses) on a full indemnity basis* arising from the [defendant] being in early possession, the said vacating of the Property and the said reinstatement of the Property …
>
> [emphasis added]

[6] DS at paras 10 to 14.

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22 Notwithstanding the plain language contained within cl 5A.2.3, the defendant submitted that the plaintiff's claim for legal costs "on an indemnity basis" was baseless. The defendant relied on *CDM and another v CDP* [2021] 2 SLR 235 ("*CDM*") at [56] in support of his argument that the plaintiff had not provided any basis for costs to be awarded on an indemnity basis.[7]

23 In the defendant's reply submissions, the defendant's argument appeared to shift substantially. *CDM* was no longer cited. Instead, the defendant highlighted that Hoo Sheau Peng J, who heard the OS on 18 January 2022 and determined that the SPA had been validly terminated, had already awarded costs of $7,500 inclusive of disbursements to the plaintiff. However, the plaintiff had not relied on any claim based on a contractual indemnity (arising from cl 5A.2.3 of the SPA) at the hearing before Hoo J.[8]

24 The defendant cited *CGG v CGH* [2021] 2 SLR 1091 ("*CGG*") to support his submission that since the plaintiff did not raise and rely on cl 5A.2.3 during the hearing before Hoo J, the plaintiff should not be allowed to make the contractual claim for indemnity costs "to avoid manifest injustice". The plaintiff should therefore be estopped from making such a claim, and seeking indemnity costs at the AD hearing was "in essence a *res judicata*, an abuse of process". It would be a "double claim" as costs for all prior work done "should be rightly claimed as costs of the application" before Hoo J.[9]

25 In *CGG*, the Appellate Division of the High Court ("ADHC") considered a claim for indemnity costs based on a contractual provision, where

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[7] DS at para 37.

[8] DRS at paras 2 to 3.

[9] DRS at paras 7 to 9.

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the appellant's entitlement to rely on the said provision had already arisen at a prior hearing in the lower court. The ADHC applied the rule laid down in *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 ("*Maryani*") that unrecovered costs in prior proceedings could not be the subject of a subsequent claim for damages. The ADHC clarified in *CGG* at [16] that "the law on costs makes no distinction of principle between a claim for costs as damages and a claim for costs based on a primary payment obligation". On the facts in *CGG*, the ADHC observed that the appellant's claim was in substance one for unrecovered legal costs, and thus the rule in *Maryani* would apply to preclude the appellant's claim.

26 Reverting to the present case, with respect, the defendant's submission reflected a fundamental misconception on his part. To begin with, the hearing of the OS was bifurcated, with the AD hearing before me only proceeding after the Court had found that the SPA was validly terminated by the plaintiff. As such, the plaintiff's arguments as to its entitlement to rely on the contractual indemnity provision in cl 5A.2.3 of the SPA would only have arisen at the AD hearing, and not during the initial hearing to determine whether the SPA had been validly terminated.

27 The plaintiff did not purport to invoke the Court's discretionary power to order costs at the AD hearing, and hence the defendant's reliance on *CGG* or *Maryani* was wholly misplaced. The plaintiff's claim was premised on its contractual entitlement pursuant to cl 5A.2.3 of the SPA. The provision is worded in clear and unambiguous terms. At the AD stage, the plaintiff was fully justified in seeking to be indemnified for reasonable and necessary legal costs that had been expended. There was no reason why the parties' contractual agreement on indemnity costs ought to be overridden, and there was no "manifest injustice" that the defendant was able to point to in any case. There

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was no relevant issue of *res judicata* or issue estoppel, much less any question of abuse of process or double-claiming, to prevent the plaintiff from making its claim.

28 I was satisfied that the quantum of $100,268.37 claimed by the plaintiff was supported by the invoices from Dentons that the plaintiff had adduced through Mr Koh.[10] The work done as itemised in each of the invoices was appropriate in the circumstances.

29 The plaintiff was awarded costs of $7,500 in OS 1092 and $1,500 in SUM 740. The plaintiff clarified that the total sum of $9,000 in party-and-party costs already awarded by the Court had been deducted from the amount it claimed, leaving a balance sum of $100,268.37.

Item 4 – Costs of reinstatement works: $103,915.48

30 This claim was again based on cl 5A.2.3 of the SPA which further provides as follows:

> In the event that the [defendant] breaches any conditions set out in Clause 5A.2.1 or if the sale and purchase of the Property is not completed for any reason whatsoever on the Completion Date or if this Agreement is terminated pursuant to Clause 5.4, without prejudice to any other rights or remedies which may have accrued in the [plaintiff's] favour:-
>
> …
>
> (b) if so required by the [plaintiff], the [defendant] shall reinstate and restore the Property to the [plaintiff's] satisfaction at the [defendant's] sole cost and expense, to its original state and condition as at the Vacant Possession Date (fair wear and tear excepted) and complete such reinstatement and restoration works within such period as the [plaintiff] may notify the [defendant] in writing.

10 Affidavit of Evidence-in-Chief of Koh Chin Beng dated 17 June 2022 ("Koh's AEIC") at pp 53 to 62.

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31 It was undisputed that no reinstatement or restoration works were done by the defendant prior to delivering up possession of the Property to the plaintiff on 27 February 2022. According to Mr Koh, the Property was delivered up to the plaintiff in a "bad state".[11] The plaintiff thus engaged its own contractors to carry out the reinstatement works. The defendant did not dispute that costs were incurred for reinstatement works but submitted that the quantum should be adjusted "due to the fact that the defendant was not allowed the opportunity to reinstate the Property to its original condition".[12] The defendant further suggested that he had not been given sufficient time to effect the reinstatement works, and had more time been permitted, he could "probably" have done so.[13]

32 The defendant's arguments were clearly untenable. The documentary evidence showed that he was given at least three opportunities from August 2021 to February 2022 to carry out the reinstatement works. Dentons wrote to the defendant's then-solicitors (CrossBorders LLC) on 18 August 2021, requesting him to "deliver up possession of the Property in the original state and condition as at Vacant Possession Date (as defined in the SPA) (fair wear and tear excepted) …".[14] On 5 October 2021, Dentons wrote directly to the defendant to make a similar request.[15] On 16 February 2022, Dentons wrote to the defendant's present solicitors (Kishan Law Chambers LLC) making a similar request and specifying that the defendant was to complete such reinstatement and restoration works by 21 February 2022.[16]

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11 Certified Transcript dated 19 July 2022 ("Transcript") at p 23 line 30 to p 24 line 4.

12 DS at para 42.

13 Transcript at p 55 lines 22 to 31.

14 1st Affidavit of Koh Chin Beng dated 26 October 2021 ("Koh's 1st affidavit") at p 130.

15 Koh's 1st affidavit at p 154.

16 Defendant's AEIC at p 19.

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33 I did not accept that the defendant did not have sufficient opportunity or time to carry out the reinstatement works to restore the Property to its original state and condition as at the Vacant Possession Date. It was patently clear that he had stoutly resisted the plaintiff's various demands to deliver up possession of the Property. Evidently, he did not see it fit to carry out any reinstatement or restoration works either. Even if the parties had been attempting some negotiations up until October 2021 to resolve the issue of completion of the sale and purchase, it would have been obvious by the time the plaintiff commenced the OS on 26 October 2021 that any prior negotiations had been unproductive.

34 The defendant eventually had to be compelled to deliver up possession by a court order on 18 January 2022, declaring that the SPA was validly terminated on 17 August 2021. Even then, he still had over a month to reinstate the Property but failed to do so before delivering up possession of the Property on 27 February 2022. In fairness, I accepted that some COVID-19-related restrictions may have been operative at the time to limit the number of people allowed to enter the Property. Nevertheless, I did not see how, other than from the defendant's bare assertion, these limitations would necessarily have precluded him from making the appropriate arrangements for reinstatement.

35 Clause 5A.2.3 of the SPA obliges the defendant to reinstate the Property to its original state and condition, excepting damage from fair wear and tear. There was no evidence from the defendant that any of the damage to the Property that the plaintiff had to rectify was the result of fair wear and tear. I accepted the plaintiff's submission that the burden of establishing this lay on the defendant as the tenant: see *Brown v Davies* [1958] 1 QB 117. The defendant did not discharge this burden. He also did not dispute that fixtures and items were left behind in the Property and were not removed. According to the plaintiff, these included, among various items, (a) a partition wall, loft structure,

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additional doors, and a fixed panel in the living hall; (b) additional cabinets in the study, kitchen and utility rooms; and (c) modifications to the electrical system and distribution box.[17] There was also damage to the floors, doors, and wardrobe, among other areas or items.[18]

36 The defendant had made no effort whatsoever to comply with cl 5A.2.3 of the SPA and had adduced no evidence as to any alternative lower or more competitive costing for the reinstatement works done. In any event, I was satisfied that the plaintiff had done its due diligence and obtained quotations from different contractors before appointing the various selected contractors to carry out the reinstatement works.[19] There was nothing to suggest that these quotations (and the corresponding invoices for the actual work done) were for unreasonably inflated sums or that the costs were unnecessarily incurred. Hence, I allowed the plaintiff's claimed quantum for this item.

Item 6 – Damages for the delayed sale and purchase of the Property: $286,962.27

37 The plaintiff's claim for damages for the delayed sale and purchase covered the period from 5 June 2020 to 30 August 2022. The claim comprised:[20]

(a) monthly rent of $8,622 for the period from 5 June 2020 to 16 August 2021 (totalling $124,008.46), the period when the defendant occupied the Property despite failing to complete the sale and purchase on 4 June 2020;

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17 PWS at para 85.

18 PWS at para 86.

19 Koh's AEIC at paras 36–42.

20 PWS at para 97.

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(b) double rent from 17 August 2021 to 27 February 2022 (totalling $111,192.01), the period when the SPA was validly terminated and the defendant continued to remain in the Property; and

(c) monthly rent from 28 February 2022 to 30 August 2022 (totalling $51,761.80), the period when the Property was sold to the Replacement Purchaser up to the completion date of the resale.

38 The defendant's primary contention was that he was not liable for this head of damages as he was "never a tenant, and tenant-landlord relationship did not exist".[21] He did not dispute that he was granted early possession of the Property in July 2018 pursuant to the SPA but denied any basis for the claims in rental and double rent. In addition, he maintained that the plaintiff had not proved that it had suffered any losses due to his failure to complete the sale and purchase but had instead managed to sell the Property at a higher price, making a profit of $391,000.[22]

39 I turn first to the defendant's contention that he was not liable for damages since he was "never a tenant". This plainly ignored the fact that he had enjoyed early possession prior to completion, but was *de facto* a trespasser since he had failed to complete the sale and purchase by the stipulated final date for completion after having taken possession of the Property since July 2018. It was not disputed that the defendant did not own any other residence in Singapore. But for being in possession of the Property, he would have had to incur the expense of renting some other residence.

[21] DS at para 23; DRS at para 10.

[22] DRS at para 11.

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40 The defendant did not pursue any arguments relating to the implications of any COVID-related legislation in his closing submissions or reply submissions. Nevertheless, I noted that notwithstanding that s 5 of the COVID-19 (Temporary Measures) Act 2020 ("the COVID-19 Act") provided temporary relief in respect of the performance of certain prescribed contracts, the plaintiff's rights would continue to accrue during the prescribed period of temporary relief, from 20 April 2020 to 30 June 2021. This is clear from s 7A(2) of the COVID-19 Act. There was also no basis for the defendant's suggestion that he should be granted rental relief pursuant to the COVID-19 (Temporary Measures) (Rental and Related Measures) Regulations 2020. As the plaintiff aptly put it, "it cannot be the case that the defendant would be entitled to stay in the Property free of charge during this period".[23]

41 As for the plaintiff's claim for double rent, this related only to the duration when the defendant continued occupying the Property after the SPA was validly terminated on 17 August 2021, up to 27 February 2022. I agreed with the plaintiff that for this duration, the defendant was in a position akin to a tenant who had held over after the determination of the tenancy.[24] He had full knowledge that the plaintiff had terminated the SPA on 17 August 2021 and that he could no longer claim any right to remain in possession of the Property. Hence, he would be liable to double rent under s 28(4) of the Civil Law Act 1909 (2020 Rev Ed), which provides:

> Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

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[23] PWS at para 107.

[24] PWS at para 109.

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42 Next, I examine the period from 28 February 2022 to 30 August 2022, the date of completion of the resale to the Replacement Purchaser. I had addressed this point in slightly more detail in delivering my oral remarks on 27 October 2022. I include my analysis in this grounds of decision only for completeness, since my rejection of the plaintiff's claim in this connection is not the subject of the defendant's appeal.

43 The plaintiff based its claim on an award of *Wrotham Park* damages (see *Wrotham Park Estate Co Ltd v Parkside Homes Ltd* [1974] 1 WLR 798 ("*Wrotham Park*")), which seek to protect the plaintiff's interest in the performance of the contract. The plaintiff further relied on Condition 15.10(c) of the LSS Conditions which entitles the vendor to retain any surplus money from the resale of the Property.[25] The SPA did not exclude the operation of Condition 15.10(c).

44 I noted that the defendant had not offered any direct response to the plaintiff's reliance on *Wrotham Park* or Condition 15.10(c) in the reply submissions. Nonetheless, despite the absence of any countervailing arguments from the defendant, I assessed that the plaintiff's claim for *Wrotham Park* damages was without merit.

45 On basic compensatory principles, the plaintiff should be placed in a position as if the contract had been performed, and be compensated for its expectation loss. By the operation of Condition 15.10(c) of the LSS Conditions, the plaintiff was entitled to retain its profit from the resale, without having to account to the defendant. However, there was no necessary corollary that the profit gained is irrelevant in assessing the plaintiff's claim to be entitled to

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25 Plaintiff's Bundle of Documents ("PBD") Tab 1.

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Wrotham Park damages. At any rate, the plaintiff had not pointed to any authority suggesting otherwise.

46 I was not persuaded that this is a suitable case for the award of *Wrotham Park* damages. In *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club*"), the Court of Appeal had made it clear (at [177]) that *Wrotham Park* damages are a limited and exceptional remedy. In the present case, orthodox compensatory damages based on the plaintiff's expectation loss were in theory available. As such, the first requirement specified by the Court of Appeal in *Turf Club* (at [217]) was not satisfied. In this connection, it was undisputed that the Replacement Purchaser had agreed to buy the Property at a substantially higher price than what the defendant had previously agreed to. The profit from resale far outstripped the *Wrotham Park* damages claimed. The plaintiff had thus successfully mitigated its loss. By its own admission, no discernible actual loss was suffered.[26] Thus, there was no basis for the plaintiff's claim of *Wrotham Park* damages as compensation for loss of its performance interest, when it had successfully obtained substitute performance at a considerable profit instead. In short, there was no remedial lacuna to fill (see [215] of *Turf Club*).

47 The second requirement outlined in *Turf Club* (at [217]) is that there should, as a general rule, be a breach of a restrictive or negative covenant. This clearly was not made out on the facts. The plaintiff conceded that the damages sought relate instead to a positive covenant on the defendant's part to complete the sale and purchase.[27] The plaintiff had not pointed to any precedent for extending *Wrotham Park* damages to such a factual context, or for that matter,

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26 PWS at para 115.

27 PWS at para 117.

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to apply to a positive covenant.

48 The plaintiff submitted that it was nonetheless reasonable for the Court to award *Wrotham Park* damages since the plaintiff could conceivably have accepted a reasonable sum to release the defendant from its positive obligation, and the Court can construct a hypothetical bargain between the parties.[28] This is the third requirement laid down by the Court of Appeal in *Turf Club* (at [217]).

49 In support of the proposition on a "hypothetical bargain", the plaintiff highlighted that the parties had previously agreed to delay completion on the condition that the defendant pays late completion interest. With respect, I found this argument unconvincing and contrived in the context of this case, since the defendant had already breached the sale and purchase by his failure to complete. It was unrealistic and irrational to speak of a "hypothetical bargain" (presumably, to release the defendant from the obligation to complete the sale and purchase) when the defendant was already in breach and had delivered up possession. As the plaintiff conceded, there was no continuing benefit to the defendant and no discernible loss to the plaintiff. Hence, the third requirement outlined by the Court of Appeal in *Turf Club* was also not met.

50 To my mind, the three requirements laid down by the Court of Appeal in *Turf Club* are conjunctive. The plaintiff had failed to establish that all three requirements had been fulfilled. I therefore allowed the plaintiff's claim for damages for the delayed sale and purchase of the Property but excluded the sum of $51,761.80 claimed as *Wrotham Park* damages. The plaintiff was thus only entitled to a reduced sum of $235,200.47.

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28 PWS at para 117.

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Item 7 – Interest on shareholders' loan: $168,709.33

51 The plaintiff claimed the additional interest on shareholders' loans as a result of the defendant's failure to complete the sale and purchase. This was the interest cost incurred arising from financing obtained by the plaintiff from its shareholders to fund the construction of the Development. The interest rate on the shareholders' loan was 3% per annum, compounded monthly, translating into $168,709.33 being the interest on the outstanding amount of the purchase price of the Property for the period from 5 June 2020 (after the original completion date) to 25 May 2022, when the loan was fully paid using the funds obtained from the sale and purchase of other units in the Development.[29]

52 The defendant did not challenge the quantum claimed but contended that the loss was too remote. The defendant submitted that the plaintiff had to show that the interest was incurred "but for" the defendant's failure to complete. In addition, the defendant was unaware that such interest might have to be paid.[30]

53 The short answer to the defendant's contention was that even if the defendant did not have actual knowledge that such interest might be payable, it was within the defendant's reasonable contemplation that the plaintiff would incur financing costs for any delay in completion or failure to complete. In this connection, the plaintiff cited the Court of Appeal decision in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*"). In *Robertson Quay*, the owner and developer of a hotel claimed for loss and damage suffered for the delay in the construction of the hotel, including loans from shareholders, related entities, and financial

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29 Koh's AEIC at para 59.

30 DS at paras 15 and 21.

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institutions. The hotel owner's claim was dismissed on the facts, but the Court of Appeal nevertheless observed thus (at [91]):

> [W]e are of the view that third-party financing of the costs of construction in large, commercial construction projects is inevitable in this day and age, and, accordingly, the parties to such a project, as reasonable people, must be imputed with the knowledge that a delay in completion would certainly give rise to additional financing costs. Consequently, we do not see why … additional interest incurred in large commercial construction projects as a result of late completion should not, in principle, be recoverable under the first limb of [*Hadley v Baxendale*].

54 The plaintiff also cited *Bauer, Adam Godfrey and another v Wee Tien Liang, deceased* [2021] SGHCR 8 ("*Bauer*"), where a purchaser similarly failed to complete the sale and purchase of a property. The Assistant Registrar awarded the seller the bank interest on the mortgage loan which had been obtained to finance the purchase of the property. Such interest would not have been incurred had the sale and purchase of the property been completed.

55 Financing costs which the plaintiff might have had to incur for the construction of the Development should be within the objective reasonable contemplation of the parties, and would fall within the first limb of the well-settled remoteness principle in *Hadley v Baxendale* (1854) 9 Exch 341. Indeed, the defendant conceded in cross-examination that the need for such financing would not have come as a surprise to him.[31]

56 I was thus persuaded by the plaintiff's submission that, regardless of the state of the defendant's actual knowledge, he should at the very least be imputed with the knowledge that any delay in the completion of the sale and purchase would give rise to additional financing costs given that this was a sizeable

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[31] Transcript at p 72 lines 1 to 8.

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development. The plaintiff had also produced copies of the debit notes and invoice from the plaintiff's shareholders in relation to the interest charge payable as well as the plaintiff's calculation of the interest owed.[32] I was satisfied that the interest cost was incurred due to the defendant's failure to complete.

57 Hence, I agreed with the plaintiff that the defendant was liable for this amount. Accordingly, the plaintiff was entitled to recover such costs.

Item 8 – Unnecessary expenses: $100,981.64

58 Finally, the plaintiff claimed for expenses incurred in relation to the sale of the Property to the defendant which were rendered unnecessary, namely: (a) commission paid to its real estate agents[33], and (b) fees paid to its conveyancing solicitors.[34] These expenses were wasted since the defendant failed to complete the sale and purchase.

59 The defendant suggested that these costs and expenses did not arise out of the resale of the Property and thus were not claimable having regard to Condition 15.10(b) of the LSS Conditions,[35] which provides:

> The following terms apply to the [plaintiff's] right to re-sell the Property:
>
> … (b) the liquidated damages payable by the [defendant] will include all costs and expenses reasonably incurred in any such re-sale or any attempted resale but the [plaintiff] must give credit for any deposit and any money paid on account of the purchase price … .

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32 Koh's AEIC at Exhibit KCB-28, pp 230 to 235.

33 Koh's AEIC at Exhibit KCB-29, pp 237 to 240.

34 Koh's AEIC at Exhibit KCB-30, pp 242 to 244.

35 DS at para 35; DRS at paras 18 to 19.

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60 In addition, the defendant maintained that the plaintiff had produced no receipts of payments to the real estate agents but only invoices. As such, this was insufficient to show that the plaintiff had paid the amount.[36]

61 The plaintiff relied on *Essex v Daniell* (1875) LR 10 CP 538, where the purchaser of a property similarly failed to complete the purchase. In that case, the English Divisional Court held at 553 that:

> … Under ordinary circumstances, where the purchaser fails to complete, without any default on the part of the vendor, the latter is entitled to recover all the expenses he has incurred in preparing for the sale, and also the loss incurred upon a re-sale, that is, the difference of price, if any. …

62 The above principle on the recoverability of unnecessary expenses incurred was cited in *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) (at para 27-038) for the proposition that the cost and expenses incurred by the seller in preparing to complete a sale that became abortive may be recovered as damages.

63 In my view, although the plaintiff did not produce receipts for the invoices in question relating to the real estate agents' commission, the plaintiff's representative (Mr Koh) had given evidence that the invoices were paid.[37] This was also the more likely outcome in accordance with the practical realities. On the balance of probabilities, the plaintiff would have had to incur the costs of the real estate agents and its conveyancing solicitors in relation to the sale and purchase of the Property. Upon the defendant's failure to complete the sale and purchase, these costs were wasted and the plaintiff should be entitled to recover them.

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[36] DS at para 35; DRS at para 20.

[37] Transcript at p 30 lines 23 to 26.

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64 I allowed this head of claim as there was sufficient evidence adduced by the plaintiff to show that the expenses were reasonably incurred and paid. This was consistent with the approach adopted in *Bauer*, where damages for an aborted sale and purchase were awarded on the basis of invoices for the property agent's commission and legal fees (see *Bauer* at [33] to [35]). Condition 15.10(b) of the LSS Conditions would not preclude the plaintiff's claim since the expenses were incurred and subsequently rendered unnecessary because of the defendant's failure to complete the sale and purchase.

Set-off of deposit

65 For completeness, I should add that I accepted the plaintiff's submission that the defendant was not entitled to set off the amount of $308,900 that was paid by him towards the purchase price ("the deposit"). The defendant had submitted that Condition 15.10(b) of the LSS Conditions (set out above at [59]) required that the plaintiff give credit for the deposit paid.[38]

66 However, in the present case, the plaintiff rightly pointed out that cl 2.1 of the SPA provides that where the terms of the SPA are in conflict with the LSS Conditions, the former shall prevail. Specifically, cl 5.4 of the SPA provides as follows:

> The [plaintiff] has the right to treat this Agreement as having been repudiated by the [defendant] if … [(iii)] … any of the conditions in 5A.2.1 are breached. In this connection, it is agreed as follows:-
>
> …
>
> (c) once this Agreement is terminated pursuant to this Clause 5.4, the [plaintiff] has the right to resell or otherwise dispose of the Property as if this Agreement had not been entered into and,

38 DS at para 32.

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> *without prejudice to any other rights or remedies available to the [Plaintiff] at law and in equity, forfeit the Deposit.*
>
> [emphasis added]

67 Clause 5.4 read with cl 2.1 of the SPA would override Condition 15.10(b) of the LSS Conditions, and expressly permit forfeiture of the deposit while preserving the plaintiff's other available rights or remedies.[39] The defendant did not offer any rebuttal to this aspect of the plaintiff's submission in his reply submissions.

Summary of quantum of damages assessed

68 The plaintiff's damages were therefore assessed as follows:

S/N	ITEM	QUANTUM
1	Management fund charges and late payment interest (undisputed)	$6,337.79
2	Property tax (undisputed)	$3,701.91
3	Legal costs	$100,268.37
4	Costs of reinstatement works	$103,915.48
5	Costs arising out of the Plaintiff's attempts to take over possession of the Property and eventual taking over possession of the Property (undisputed)	$1,845.85
6	Damages for the delayed sale and purchase of the Property	$286,962.27 (less $51,761.80)
7	Interest on shareholders' loan	$168,709.33
8	Unnecessary expenses	$100,981.64
	Total	**$720,960.84**

[39] PWS at paras 144 to 146; Plaintiff's Reply Submissions dated 27 September 2022 at para 25.

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Costs

69 As for costs of the OS, the plaintiff had succeeded in proving virtually all aspects of its claim and was entitled to costs on an indemnity basis in view of cl 5A.2.3 of the SPA. The plaintiff further pointed out that the defendant had not taken up the plaintiff's offer to settle at $700,000, a sum lower than the sum awarded after the AD hearing.[40] This offer was made after the parties had exchanged their affidavits of evidence-in-chief, on 9 July 2022.

70 After hearing the parties' submissions, I ordered that costs of the OS be fixed on the indemnity basis at $45,000 to the plaintiff, with reasonable disbursements in addition.

Conclusion

71 For the reasons set out above, I allowed the plaintiff's claim with costs for the various heads of damages, subject to a reduction of the quantum claimed in respect of Item 6 (damages for the delayed sale and purchase of the Property). The plaintiff was thus entitled to damages amounting to $720,960.84 with interest at the usual rate of 5.33% from the date of the OS to judgment.

See Kee Oon
Judge of the High Court

[40] Transcript at p 12 lines 9 to 29.

Ng Hui Min and Mok Zi Cong (Dentons Rodyk & Davidson LLP) for the plaintiff;
Kishan Pratap and Jasmine Yan (Kishan Law Chambers LLC) for the defendant.

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