

CASE NOTE: SINGAPORE

CASE CITATION:

Joseph Mathew and Another v Singh Chiranjeev and Another [2009] SGCA 51 (on appeal from *Singh Chiranjeev v Joseph Mathew* [2008] SGHC 222)

NAME AND LEVEL OF COURT:

Court of Appeal

DATE OF DECISION:

29 October 2009

MEMBERS OF THE COURT:

Andrew Phang Boon Leong JA, Chan Sek Keong CJ, V K Rajah JA

Sale of property; exchange of e-mail communications accepting offer and price; cancellation of contract; whether binding agreement

Facts

The appellants were the joint owners of a property (the “Property”) and had acted through their agent (“Agent”). The respondents were the intending purchasers. The Agent sent an e-mail dated 12 May 2007 to the appellants confirming that his asking price had been accepted by the respondents. A deposit was collected, and the Agent sent another e-mail on the same day to the appellants confirming the respondents’ acceptance of the offer. One of the appellants replied by e-mail to the Agent the next day, as follows:

Dear Helene,

Understand that at this growing market, the property price is going up including rental market. However I am taking a decision to proceed to sell the property at this price of S\$506K which is reasonably OK as my minimum expectation was S\$510K which we couldn’t achieve.

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

- You can also deposit the cheque to my account POSB-026-27916-0

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

- My address as follows

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

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

Thanks for your understanding and support.

Best Regards

Joseph Mathew

[underlining in original]

However, the appellant subsequently cancelled his plan and indicated that he will return the deposit to the respondents. The respondents took legal action against the appellants, and Andrew Ang J in the High Court held in the respondents’ favour and ordered, amongst other things, that the appellants jointly sign and grant the Option to Purchase (“Option”) to the respondents and if they refuse, the Registrar of the Supreme Court shall have the power to do so on their behalf.

Decision

The members of the Court of Appeal were called upon to decide on three issues. Issue 1: whether there was a binding agreement between the parties for the grant of the Option; Issue 2: if there was a binding agreement,

whether the requirements of section 6(d) of the Civil Law Act were satisfied; and Issue 3: if Issue 2 was not satisfied, whether the agreement was nevertheless enforceable on the ground of part performance.

Issue 1

The Court of Appeal decided there was a binding agreement. The appellants' argument that they understood that they would only be bound upon signing the Option was rejected because the applicants' e-mail of 13 May 2007 indicated otherwise, and their signatures were merely a necessary part of the process to give effect to a binding agreement which was already entered into. Offer and acceptance, consideration for the grant of the Option and the intention to create legal relations were present as a result of the e-mail.

Issue 2

However, for the agreement to be enforceable, it must be in writing and signed by both parties in accordance with section 6(d). Hence the Court of Appeal also decided that the section 6(d) requirements were met. The Court of Appeal held that the agreement to grant the Option itself need not be in writing, and a note or memorandum will be sufficient if it contained all the material terms of the agreement, that is names or adequate identification of the parties, description of the subject matter and the nature of the consideration. In relation to signatures, the Court of Appeal took the view that it will be sufficient if the person "signing" had shown in some way that he recognised the document as an expression of the agreement.

Even though the requirements under section 6(d) were satisfied, an issue as to whether section 4(1)(d) of the Electronic Transactions Act (Cap 88, 1999 Rev Ed) ("ETA") was applicable to negate the agreement. On examining sections 4(1)(d), 7, 11(1), 11(2) and 12 of the EA, the Court of Appeal concluded that section 4(1)(d) of

the ETA was not applicable to negate the formation of the agreement to grant the Option to the respondents, even though section 4 of the ETA provides that electronic signatures shall not be used for matters involving interests in land. This is because exclusion under section 4(1)(d) of the ETA does not necessarily prevent a transaction from being executed electronically. It would be a matter for legal interpretation whether an electronic form satisfies a particular legal requirement for writing or signature.

Issue 3

Finally, the CA held that although it used to be the case that part payment of money could never amount to part performance, this is no longer the case. However, the converse does not necessarily follow because such payment might be equivocal in nature. The facts and circumstances surrounding the payment of the deposit in the present case however, clearly constituted part performance.

Commentary

This case highlights the interpretation of section 6(d) of the Civil Law Act as well as the operation of the ETA vis a vis electronic records and electronic signatures relating to the transactions excluded under section 4 of the ETA. It is clear that the ETA must be applied and interpreted in a manner which does not impede or negate the validity of contracts or the formation of contracts if the main ingredients or requirements of a valid contract are present.

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