

17/82

No. 15 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

PHOENIX HEIGHTS ESTATE (PTE) LTD Appellants
(Defendants)

- and -

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

RECORD OF PROCEEDINGS

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

Solicitors for the
Appellants

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

Solicitors for the
Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

B E T W E E N :

PHOENIX HEIGHTS ESTATE (PTE) LTD Appellants

- and -

1. LEE KAY GUAN
2. ONG KIM LIONG Respondents

RECORD OF PROCEEDINGS

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	Affidavit of 1st Appellant (Lee Kay Guan)	28th February 1979

The Solicitors for the Respondents objected to the reproduction of the documents which form a Supplemental Record to this Appeal.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

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

- and -

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

10

RECORD OF PROCEEDINGS

No.1

WRIT OF SUMMONS

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 4663 of 1975

Between:

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

And

PHOENIX HEIGHTS ESTATE
(PTE) LTD. Defendants

20

In the
High Court

No.1
Writ of
Summons

31st
December
1975

THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF
JUSTICE OF SINGAPORE, IN THE NAME AND ON BEHALF
OF THE PRESIDENT OF THE REPUBLIC OF SINGAPORE

To: Phoenix Heights Estate (Pte) Ltd.,
a company incorporated in the Republic of
Singapore and having its registered office

In the
High Court

at 23 Holland Rise, Singapore 10.

No.1
Writ of
Summons
31st December
1975
(continued)

WE COMMAND YOU that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of 1. Lee Kay Guan 2. Ong Kim Liong both of No.127, Upper Bukit Timah Road, 8 m.s., Singapore and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution. 10

WITNESS: MR. TAN WEE KIAN
Registrar of the Supreme Court in Singapore
the 31st day of December 1975.

Sgd. Yap & Yap

Sgd. Colin Chai

Plaintiff Solicitors

Asst. Registrar
Supreme Court,
Singapore.

INDORSEMENT

The plaintiffs' claim against the defendants are :- 20

1. For specific performance of and an Order that the defendants forthwith perform the agreement dated 6th January, 1973 made between the defendants of the one part and the plaintiffs of the other part.

2. For an Order that the defendants pay the plaintiff the sum of \$20,984.00 being liquidated damages.

3. For an Order that the defendants do refund to the plaintiffs' solicitors forthwith the sum of \$8,480.00 being \$9,000.00, the 5% of the purchase price, less \$920.00 for Government Resurvey fees and costs of Duplicate Certificate of Title for retention by the plaintiffs' solicitors pursuant to clause 3(e) of the said Agreement dated 6th January, 1973. 30

4. Costs.

5. Further liquidated damages from 18th April, 1975 to the date of completion. 40

6. Any other or further reliefs.

Sgd. Yap & Yap
Solicitors for the Plaintiffs

This Writ is issued by Messrs. YAP AND YAP of 34-A Phillip Street, Singapore, Solicitors for the said Plaintiffs whose address is at No.127, Upper Bukit Timah Road, 8 m.s., Singapore.

In the
High Court

No.1

Writ of
Summons

31st December
1975

(continued)

10

This Writ was served by me Hari Ram Singh on the Defendants by leaving a copy of same at their registered office at 23, Holland Rd, Singapore on Saturday the 10th day of January 1976 at 12.15 p.m.

Indorsed the 10th day of January 1976.

Sgd.

Process Server

N.B. - This writ may not be served more than twelve calendar months after the above date unless renewed by order of court.

20

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor at the Registry of the Supreme Court.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$5.00 with an addressed envelope to the Registrar, Supreme Court, Singapore 6.

In the
High Court

No. 2

Amended
Statement of
Claim

5th May 1977

No. 2

AMENDED STATEMENT
OF CLAIM

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Suit No. 4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

Phoenix Heights Estate
(Pte) Ltd. Defendants

10

Amended in red pursuant to the Order of Court
dated the 25th day of April 1977.

Dated the 5th day of May 1977.

Sd.

Asst. Registrar

AMENDED STATEMENT OF CLAIM

1. The plaintiffs are the purchasers of the defendants' house known as No.8 Phoenix Garden, Singapore formerly known as Private Lot 74 Phoenix Heights, Singapore. 20

2. The defendants are a limited company incorporated in the Republic of Singapore and are developers of the said property.

3. By an agreement dated the 6th day of January, 1973 and made between the plaintiffs of one part and the defendants of the other part, the plaintiffs agreed to buy and the defendants agreed to sell the said property upon the terms therein stated. The plaintiffs will refer to the said agreement for its full terms and effect at the trial of this action. 30

4. The said agreement inter alia provides as follows :-

(a) That the purchase price of the said property shall be \$180,000.00.

(b) That the sale and purchase shall be completed on or before the 30th of 40

June, 1973, or on other subsequent date as may be appointed by the Controller of Housing.

In the High Court

No.2 Amended Statement of Claim 5th May 1977 (continued)

10 (c) That if the defendants fail to complete the sale and purchase as aforesaid, the defendants shall pay to the plaintiffs liquidated damages calculated from day to day in respect of the period commencing from the appointed date to the date when the notice to complete is actually given at the rate of 9% per annum on the said purchase price of \$180,000.00.

20 (d) That \$9,000.00 or 5% of the said purchase price of \$180,000.00 shall be paid to the plaintiffs' solicitors as stakeholders to be paid to the defendants only on the production of the certificate of fitness for occupation in respect of the property.

5. Up to date the plaintiffs paid to the defendants under the said agreement the sum of \$171,000.00.

6. The defendants gave to the plaintiffs a notice to complete on the 8th day of December, 1975.

30 7. The defendants are liable to pay to the plaintiffs liquidated damages in the sum of ~~\$20,984.00~~ \$31,423.56.

Particulars

From ~~1.1.74~~ 31.12.73 at 9% per annum based on ~~\$20,984.00-~~

To ~~17.4.1975~~ 8.12.75 \$180,000.00 for 1 year 343 days \$31,423.56

40 8. The plaintiffs are ready and willing to complete the sale and purchase in accordance with the terms of the agreement at all material times.

9. Notwithstanding repeated requests the defendants failed and continue to fail to complete the said sale and purchase and to pay to the plaintiffs and the plaintiffs' solicitors the liquidated damages ~~\$20,984.00~~ \$31,423.56.

In the
High Court

No.2

Amended
Statement
of Claim

5th May 1977

(continued)

10. On 28th March, 1977 by an Order of Court herein it was ordered that the plaintiffs be at liberty to enter judgment against the defendants for the sum of \$13,742.26 and be at liberty to proceed to trial for the balance of the claim.

	<u>Date</u>	<u>Particulars</u>	<u>Amount</u>	
	8.12.75		\$31,423.56	
	Less:			
	28.3.77	\$31,742.26 770.00	\$14,512.26	10
		Balance:	<u>\$16,911.30</u>	

And the plaintiffs claim :-

1. For specific performance of and an order that the defendants forthwith perform the agreement dated 6th January 1973 made between the defendants of the one part and the plaintiffs of the other part.
2. For an Order that the defendants pay the plaintiffs the sum of ~~\$20,984.00~~ being \$16,911.30 as liquidated damages and interest on \$31,423.56 or \$16,911.30 from 9th December, 1975 to date of payment. 20
3. Costs.
4. Any other or further reliefs.

Dated the 19th day of January, 1976.

Sgd. Yap & Yap

Solicitors for the Plaintiffs

Dated and re-delivered this 5th day of May 1977.

Sgd.

Solicitors for the Plaintiffs 30

To the abovenamed Defendants
And their solicitors,
Messrs. Guok & Co.,
Singapore.

No. 3
AMENDED DEFENCE

In the
High Court

No. 3

Amended Defence

13th May 1977

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Suit No.4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

10 Phoenix Heights Estate
(Pte) Limited Defendants

Amended in red pursuant to Order 20 r.5 of the
Rules of the Supreme Court. Dated the 13th
day of May 1977.

Sd. Low Wee Ping
Asst. Registrar

AMENDED DEFENCE

1. Paragraphs 1, 2 and 3 of the Statement of
Claim are admitted.
- 20 2. Paragraph 4 of the Statement of Claim is
admitted insofar as the price of the property
is concerned and in further answer thereto, the
Defendants will say that the date of completion
which was fixed in the Contract as at the 30th
June, 1973, was extended by the Controller of
Housing to the 31st December, 1973, and is still
not finally determined and is under consideration
and the claim, if any is premature.
- 30 3. Further, if the Defendants are liable to pay
liquidated damages which is denied for reasons
appearing in paragraph 4 herein their liability
in that regard ceased on the 28th November, 1974
when a Temporary Occupation Licence was granted
and the Plaintiff was at liberty to occupy the
premises and the Defendants offered vacant
possession.
- 40 4. The Defendants will contend that the
provision for liquidated damages in the contract
amounted in law to a penalty and is not recover-
able by virtue of the fact that it provides for
payment of this sum even though making a good
title to the land and premises was delayed without

In the
High Court

No.3

Amended
Defence

13th May 1977

(continued)

the default of the Defendants which was the fact and by virtue thereof, no sum can be recovered by way of liquidated damages.

5. Further the Defendants have without prejudice to their rights under the Contract offered payment of the sum of 9% of the selling price up to the date when they notified the Plaintiff that possession could be taken and a Temporary Occupation Licence was granted and the Plaintiff's claim herein, if any, has been satisfied. 10

6. Paragraph 5 of the Statement of Claim is admitted.

7. The Defendants gave the Plaintiff Notice to Complete on the 6th of December 1975 and say that it was not possible to give Notice to Complete before the said date because the Certificate of Title which was required to be produced was delayed without the fault of the Defendants, and will further say the date of completion has not yet been finalized by the Controller of Housing. 20

8. Paragraph 7 of the Statement of Claim is denied.

9. Paragraph 8 of the Statement of Claim is denied.

10. The Plaintiff refused to take vacant possession of the property when offered and did not do so until the 17th day of April 1975 resulting in the unnecessary loss to the Defendants in the form of property tax and other expenses. 30

11. Paragraph 9 of the Statement of Claim is denied.

12. The Defendants were under an obligation to convey a good title and the delay in issuing the Notice to Complete as far as the title is concerned is no fault of theirs and the construction of the house was delayed by circumstances beyond their control. 40

13. The Defendants took all reasonable steps to complete the construction of the house and the time for completion is still subject to the Controller of Housing's decision.

14. The Transfer and Restriction were duly completed after the disagreements over the

forms were settled and the property transferred to the Plaintiff on the 4th of February 1976.

In the
High Court

No.3

15. Paragraph 10 of the Amended Statement of Claim is denied and the Defendants say that the Order of Court dated 28th of March 1977 was varied by another Order of Court dated 1st of April 1977 and that the Judgment made against the Defendants was for \$4,742.26 cts. and not \$13,742.26 cts. as the Plaintiff had failed and never paid the \$9,000/- required under the Agreement dated the 6th of January 1973.

Amended
Defence

13th May
1977

(continued)

10

16. Save as is hereinbefore expressly admitted or denied the Defendants deny each and every allegation of the Statement of Claim as if the same had been set out herein seriatim and soecifically traversed.

Dated and re-delivered this 13th day of May 1977.

20

Sgd. Guok & Co.

Solicitors for the Defendants

To the above named Plaintiff
and her solicitors
Messrs. Yap & Yap
34A Phillip Street
Singapore

No. 4

REPLY

No.4
Reply

20th March
1976

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 4663 of 1975

Between

- 1. Lee Kay Guan
- 2. Ong Kim Liong (m.w.) Plaintiffs

And

30

Phoenix Heights Estate
(Pte) Ltd. Defendants

R E P L Y

1. At all material times, the defendants admitted liability in writing for the sum of \$14,512.26 being liquidated damages calculated on the sum of \$180,000.00 at 9% per annum for the period from 1st January, 1974 to 28th November 1974.

In the
High Court

No.4
Reply
20th March
1976
(continued)

2. The balance of the plaintiffs' claim is for liquidated damages under clause 11 of the Agreement as follows :-

- (a) \$31,423.56 by liquidated damages calculated on \$180,000.00 at 9% per annum for the period from the appointed date (1st January, 1974) to the date when the Notice to Complete was given (7th December, 1975).

10

3. The plaintiffs will contend that the defence, if sustained on facts, does not disclose any cause of defence in law.

4. The plaintiffs join issue with the defendants on their Defence.

Dated the 20th day of March 1976.

Sgd. Yap & Yap

Solicitors for the Plaintiffs

To the abovenamed Defendants
and their solicitors
Messrs. Guok & Ganesan,
Singapore.

20

No.5
Judgment under
Order 14, Rule
3
14th April 1977

No. 5

JUDGMENT UNDER ORDER 14,
RULE 3

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Suit No. 4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

30

And

Phoenix Heights Estate
(Pte) Ltd. Defendants

J U D G M E N T

THIS 14TH DAY OF APRIL 1977

The defendants having entered appearance herein and the Court having under Order 14, Rule 3 ordered that judgment as hereinafter provided be entered for the plaintiffs against the defendants.

In the
High Court

No.5

Judgment
under Order
14, Rule 3

14th April
1977

(continued)

IT IS THIS DAY ADJUDGED that the Defendants do pay the Plaintiffs \$4,742.26 (being \$13,742.26 less \$9,000.00).

Sgd. Low Wee Ping

Asst. Registrar

10

Entered this 14th day of April 1977 in Volume 172 Page 128 at 3.50 p.m.

No. 6

JUDGMENT AFTER TRIAL

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

Phoenix Heights Estate
(Pte) Ltd. Defendants

BEFORE THE HONOURABLE MR. JUSTICE
CHOR SINGH IN OPEN COURT

The 30th day of September 1977

This action having been tried before the Honourable Mr. Justice Choor Singh on the 30th day of September 1977, IT IS ADJUDGED that Judgment be entered for the Defendants AND IT IS ORDERED that the defendants do pay the plaintiffs their costs up to date of payment in and that the plaintiffs do pay the defendants their costs after date of payment in and such costs to be taxed AND IT IS FURTHER ORDERED that the amount paid into Court be paid out to the Defendants.

Sgd.
Asst. Registrar

20

30

In the
High Court

No.6

Judgment
after Trial

30th September
1977

(continued)

Entered this 17th day of October 1977
in Volume 181 Page 141 at 3.35 p.m.

No.7
Order
30th September
1977

No. 7

ORDER

IN THE HIGH COURT IN SINGAPORE

Suit No. 4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

10

Phoenix Heights Estate
(Pte) Ltd. Defendants

Coram: Choor Singh J.

ORDER OF COURT

30th September 1977

Judgment for the defd. and costs up to
date of payment for the pltf. and costs
after date of payment in to the defds.
such costs to be taxed.

The amount paid in to be paid out to 20
the defendants.

Sgd. CHOOR SINGH

Certified true copy.

Sgd.
Private Secretary to Judge
Court No.6
Supreme Court, Singapore.

No. 8

GROUNDS OF JUDGMENT

In the
High Court

No.8

Grounds of
Judgment

23rd January
1978

IN THE HIGH COURT IN SINGAPORE

Suit No. 4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong Plaintiffs

And

10 Phoenix Heights Estate
 (Pte) Ltd. Defendants

Coram: Choor Singh, J.

GROUNDS OF JUDGMENT

The Plaintiffs' claim in this action was for damages for breach of contract.

20 The facts are not in dispute and they are these. The plaintiffs are the purchasers of the defendants' house known as No.8 Phoenix Garden, Singapore. The defendants are the developers of the said property. Under the Sale Agreement the house was to be ready for occupation and its sale and purchase was to be completed on or before the 30th June 1973. The Sale Agreement also provided that if the defendants failed to complete the sale and purchase as aforesaid, the defendants shall pay to the plaintiffs liquidated damages calculated from day to day in respect of the period commencing from the appointed date to the date when the notice to complete was actually given at the rate of
30 nine per cent per annum on the purchase price of \$180,000/-.

40 There was considerable delay on the part of the defendants in completing the house. It was finally completed in November 1974 and on 28th November 1974 the building authority issued a Temporary Occupation Licence for the house to be occupied by the purchasers. The plaintiffs for some reason best known to them, refused to take possession and occupy the house on the 28th November 1974. The house lay vacant until the 17th April 1975, when, again for some reason best known to them, the plaintiffs took possession and occupied the house.

In the
High Court

No. 8

Grounds of
Judgment

23rd January
1978

(continued)

They also commenced these proceedings claiming damages.

The Defendants admitted that they were liable for damages up to the date when the T.O.L. was issued, i.e. 28th November 1974 and damages calculated up to that date have been paid to the plaintiffs.

The dispute in this case is as to whether or not the defendants are liable for damages for the period 28th November 1974 to the 8th December 1975 when the defendants gave to plaintiffs the requisite notice to complete. The defendants maintained that they were unable to issue a notice to complete earlier because they could not make a title to the land and premises for reasons beyond their control. The issue of the Certificate of Title which was required to be produced at the completion, was delayed by the competent authority without the fault of the defendants. 10 20

In my judgment, on the facts of this case, the defendants were not liable for damages for the period in issue. The plaintiffs purchased the property, a dwelling house, for their own occupation. There was no evidence that they purchased it for re-sale or that they had in fact entered into a sub-sale Agreement in consequence of which they had suffered financial loss. The house was ready for occupation on the 28th November 1974 and authority to occupy it was granted by the Building Authority in the form of a T.O.L. The plaintiffs had no valid reason for not taking possession and occupying it on the 28th November 1974. 30

The Plaintiffs' claim for damages is in essence a claim for compensation for financial loss suffered by them from the 28th November 1974 to the 8th December 1975. It is therefore necessary to ascertain what loss, if any, they suffered during that period. The relevant period can be split up into two periods, 28th November 1974 to 16th April 1975 and 17th April 1975 to 8th December 1975. During the latter period the plaintiffs were in occupation of the house. They suffered no financial loss at all. During the first period, 28th November 1974 to 16th April 1975, they could have been in occupation of the house. They were offered possession of the house on the 28th November 1974 with the necessary authority from the Building Control Division in the form of a T.O.L. They refused to take possession of the house and gave no valid reason 40 50

for not doing so. In my judgment, for this period also, they were not entitled to any damages.

In the High Court

No.8

Grounds of Judgment

23rd January 1978

(continued)

For these reasons I held that, on the facts of this case, the plaintiffs were entitled to damages only up to the 28th November 1974 when a T.O.L. was issued and they were offered possession of the house.

Dated this 23rd day of January 1978.

10

J U D G E

Certified true copy.

Sgd.

Private Secretary to Judge
Court No. 6
Supreme Court, Singapore.

In the Court
of Appeal

No.9

Notice of
Appeal

11th October
1977

No. 9

NOTICE OF APPEAL

NOTICE OF APPEAL TO COURT OF APPEAL

CIVIL APPEAL NO.57 OF 1977

20

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Appellants

And

Phoenix Heights Estate
(Pte) Ltd. Respondents

In the matter of Suit No.4663 of 1975

Between

1. Lee Kay Guan Plaintiffs
2. Ong Kim Liong (m.w.)

30

And

Phoenix Heights Estate
(Pte) Ltd. Defendants

In the Court
of Appeal

NOTICE OF APPEAL

No.9
Notice of
Appeal
11th October
1977
(continued)

Take Notice that the Appellant being dissatisfied with the decision of the Honourable Mr. Justice Choor Singh given at High Court on the 30th day of September, 1977 appeal to the Court of Appeal against the part of the judgment holding that the liquidated damages are payable only up to the date of the issue of the Temporary Occupation Licence and/or the whole of the said decision. 10

Dated the 11th day of October 1977.

Sgd. Yap & Yap

Solicitors for the Appellants

To the Registrar
Supreme Court
Singapore

And to the abovenamed Respondents
And their Solicitors
Messrs. Guok & Co.
Singapore. 20

The address for service of the Appellants is care of Messrs. Yap & Yap of 34A Phillip Street, Singapore 1.

No. 10

PETITION OF APPEAL

In the Court
of Appeal

No.10

Petition
of Appeal

31st
January
1978

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

CIVIL APPEAL NO. 57 OF 1977

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Appellants

And

- 10 Phoenix Heights Estate
(Pte) Ltd. Respondents

In the matter of Suit No.4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

- Phoenix Heights Estate
(Pte) Ltd. Defendants

PETITION OF APPEAL

- 20 To the Honourable the Judges of the Court of
Appeal.

The Petition of the abovenamed Appellants
showeth as follows :-

1. The appeal arises from a claim by the Appellants for liquidated damages under Clauses 11 and 4 of the parties' agreement dated 6th January, 1973 for the period from the extended completion date "to the date when the Notice to Complete shall actually have been given."
- 30 2. By a judgment dated the 30th day of September, 1977, judgment was given for the Respondents and that the Respondents do pay the Appellants costs of the action up to date of payment into Court (11.3.76) and the Appellants do pay the Respondents the costs after the date of payment and such costs to be taxed and the amount paid into Court be paid out to the Respondents.

In the Court
of Appeal

No.10
Petition
of Appeal
31st January
1978
(continued)

3. Your Petitioner is dissatisfied with the said judgment on the following grounds:-

- (1) The Learned Judge errs in law in not giving effect to clauses 11 and/or 4 of the parties' agreement dated 6th day of January, 1973 and/or effect to the intention of the statutes (the Housing Developers (Control and Licencing) Act, (Chapter 250), Section 21(2)(d); and The Housing Developers (Amendment) Rules, 1967 Rule 9A (1)). and/or in totally disregarding the whole of the said agreement and the law relating to the contractual provision for liquidated damages, McGregor on Damages, 13th ed, page 239, paragraph 334. 10
- (2) The Learned Judge errs in law in holding that the Appellants are not entitled to liquidated damages under the said clauses 11 and/or 4 of the said agreement from the completion date fixed by the said agreement, or the date appointed by the Controller of Housing, "to the date when the Notice to Complete shall actually have been given." 20
- (3) The Learned Judge errs in law in holding that the agreement or the law requires the appellants to take possession of the property as from the date of the issue of the Temporary Occupation Licence, or in holding that the issue of possession is relevant to the calculation of liquidated damages under clause 11 of the said agreement. 30
- (4) The verdict is against the weight of the evidence as a whole in the circumstances.
- (5) The Learned Judge errs in law in not hearing arguments and/or evidence or excluding evidence. 40
- (6) The Learned Judge errs in holding that the appellants refused possession of the house, and gave no reason for not doing so, or in holding that there was no evidence that it was for resale or in totally disregarding the loss of opportunity of re-sale during the period from 30th June, 1973 (the completion date fixed by the said agreement) to the date of the issue of the Temporary Occupation Licence. 50

4. Your petitioners pray that such judgment may be reversed or set aside.

In the Court of Appeal

Dated the 31st day of January 1978

No.10

Sgd. Yap & Yap
Solicitors for the Appellants

Petition of Appeal

31st January 1978

(continued)

To the Registrar
Supreme Court
Singapore

10 And to the abovenamed Respondents
And their Solicitors
Messrs. Guok & Co.
Singapore.

No. 11

RESPONDENT'S NOTICE TOGETHER
WITH MESSRS YAP & YAP'S LETTER
DATED 11th December, 1974

No.11

Respondent's
Notice
together
with Messrs.
Yap & Yap's
letter
dated 11th
December
1974

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

20 CIVIL APPEAL NO. 57 OF 1977

14th February 1978

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Appellants

And

Phoenix Heights Estate
(Pte) Ltd. Respondents

In the matter of Suit No. 4663 of 1975

Between

30 1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

Phoenix Heights Estate
(Pte) Ltd. Defendants

RESPONDENTS' NOTICE

Take Notice that, on the hearing of the

In the Court
of Appeal

No.11
Respondents'
Notice
together with
Messrs.Yap &
Yap's letter
dated 11th
December 1974

14th February
1978

(continued)

above appeal, the Respondents abovenamed, will contend that the decision of the Honourable Mr. Justice Choor Singh given on 30th September, 1977 ought to be affirmed on the grounds additional to those relied upon the trial Court :-

1. That the contract was partly a building contract and partly a sale of land and in respect of the former the Respondents admitted liability and paid damages up to date of T.O.L. but contend that in law no damages were due for delay to complete in respect of the latter. 10

2. The learned Judge found that there was no evidence that the Appellants had purchased the house for re-sale or had entered into a sub-sale Agreement and the Respondents contend that even if there were such evidence there was nothing standing in the Appellants' way to effect a re-sale by Assignment of Rights and Interest to a third party (as this had been done in all transactions involving landed properties where the titles were not yet available) and evidenced by the fact that the Appellants though without the title were then able to mortgage the property to Chung Khiaw Finance Ltd. and this unfettered right of the Appellants had been doubly confirmed in S.17 of The Housing Developers Rules 1976. 20 30

3. On the learned Judge's findings that the Appellants had no valid reason for not taking possession when T.O.L. was granted, the Respondents humbly add that the question is of public importance involving public policy that no habitable property should be laid to waste especially in housing estates of today, both from the Government and public point of view. (Mcgregor on Damages 13th Ed. Page 139 paragraph 197). The Appellants' reply of 11th December 1974 clearly refusing possession and failure to mitigate supported the findings of the learned Judge. 40

4. The Contract as formulated by the Controller with provisions under Rule 9A(2) of The Housing Developers (Amendment) Rules 1967 for amendments deletion and alteration to be allowed by him had never been affirmed by Parliament and must therefore subject to judicial control as being unreasonable and repugnant to the common law. It was not strictly a statutory contract but a contract made under statutory powers which did not license the Controller to alter the law of 50

damages in any shape or form but to make contracts within the law. Clause 10 of the contract contradicted Clause 3(h) and the term "liquidated damages" employed therein was inconclusive and was in law a penalty.

10 5. The learned Judge did not refuse to hear arguments and/or evidence as alleged by the Appellants whose written arguments and documentary evidence were submitted shortly before the trial.

Dated this 14th day of February 1978.

Sgd. Guok & Co.
Solicitors for the Respon-
dents

To: The Registrar
Supreme Court
Singapore

20 And to the abovenamed Appellants
and their Solicitors
Messrs. Yap & Yap
Singapore.

YAP & YAP
34-A Phillip Street,
Singapore 1.
Advocates & Solicitors

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

30 Your ref: PG/JT/753/72
Our ref: YBC/KT/1621/72

11th December, 1974

Dear Sirs,

re: Pte Lot 74 Phoenix Heights
Estate

We refer you to the above matter.

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

Please let us have your clients' Notice

In the Court
of Appeal

No.11
Respondents'
Notice
together with
Messrs. Yap
& Yap's
letter dated
11th December
1974

14th February
1978

(continued)

In the Court
of Appeal

No.11
Respondents'
Notice
together with
Messrs.Yap &
Yap's letter
dated 11th
December 1974
14th February
1978

(continued)

of Completion in accordance with clause
11 of the contract and note that our
clients are claiming liquidated damages
under the said clause 11.

Yours faithfully,

Sgd. Yap & Yap

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

No.12
Written
Judgment
24th November
1978

No.12

10

WRITTEN JUDGMENT

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

CIVIL APPEAL NO. 57 OF 1977

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Appellants

And

Phoenix Heights Estate
(Pte) Ltd. Respondents

20

(In the Matter of Suit No.4663 of 1975)

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

Phoenix Heights Estate
(Pte) Ltd. Defendants)

Coram: Wee Chong Jin, C.J.
F.A.Chua J.
D.C. D'Cotta, J.

30

J U D G M E N T

In the Court
of Appeal

No.12

Written
Judgment

24th November
1978

(continued)

On 6th January 1973 the parties entered into an agreement for the sale and purchase of a building plot in a building estate then being developed by the respondents together with a detached bungalow in the course of erection thereon at the price of \$180,000/-. The material provisions of the agreement read as follows :-

- 10 "Clause 3. The purchase price shall be paid by the Purchaser to the Vendor by the instalments and at the times following, that is to say :-
- (a) Immediately upon the signing of this Agreement a sum equivalent to 10% of the purchase price such sum to include the booking fee if any paid.
- 20 (b) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the foundation work of the building has been completed a sum equivalent to 10% of the purchase price.
- (c) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the reinforced concrete framework of the building has been completed
- 30 a sum equivalent to 15% of the purchase price.
- (d) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the brick walls of the building with door and window frames in position have been completed a sum equivalent to 15% of the purchase price.
- 40 (e) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the roofing and internal plastering of the building have been completed a sum equivalent to 15% of the purchase price.
- (f) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the
- 50 electrical wiring and plumbing

(without fittings) to the building have been completed a sum equivalent to 10% of the purchase price.

(g) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the Vendor's Architect has certified that the roads and drains serving the building have been completed a sum equivalent to 15% of the purchase price. 10

(h) On completion of the sale and purchase herein as hereinafter provided and on delivery to the Purchaser of vacant possession of the property sold the balance of 10% of the purchase price, 5% of which shall forthwith be paid to the Vendor and the remaining 5% shall be paid to the Purchaser's solicitors as stakeholders to be paid to the Vendor only on production of the Certificate of Fitness for Occupation of the Chief Building Surveyor in respect of the building. 20

Every such Notice shall be supported by the requisite certificates of the Vendor's Architect and shall be accepted without objection or enquiry as conclusive of the fact that the works therein referred to have been completed. 30

Clause 10. The Vendor shall at its own cost and expense obtain the approval of the Competent Authority under Section 9(3) of the Planning Act, Cap. 279 of the 1970 Revised Edition for the subdivision of the property sold but any delay in obtaining such approval shall not be a ground for any delay by the Purchaser in the payment on due date of any of the instalments of the purchase price hereinbefore referred to in Clause 3 hereof and the interest thereon (if any). 40

Clause 11. The sale and purchase herein shall be completed at the office of the Vendor's Solicitors Messrs. Guok & Ganesan of No.11 D'Almeida Street, Singapore fourteen (14) days after the receipt by the Purchaser or his Solicitors of the Notice to Complete of the Vendor's or of its Solicitors such notice to be accompanied by the Vendor's 50

10 Architects' certificate that the building and road drainage and sewerage works have been completed in accordance with the relevant approved plans and that sewerage water and electricity and/or gas services have been duly connected to the building and that the said approval of the Competent Authority for sub-division has been obtained. On completion, the Vendor shall make and execute to the Purchaser an assurance of the property sold such assurance to be prepared by and at the expense of the Purchaser. The said Notice to Complete shall be given by the Vendor on or before the 30th day of June 1973 or such other subsequent date or dates as may after 20 the date hereof be appointed by the Controller of Building. If the Vendor shall fail to give the said Notice to Complete on the appointed date the Vendor shall pay to the Purchaser liquidated damages calculated from day to day in respect of the period commencing from the appointed date up to the date when the said Notice to Complete shall have actually been given 30 at the rate of nine per centum (9%) per annum on the purchase price such interest to be paid and deducted from the balance of the purchase price payable on completion."

40 The facts which are not in dispute are these. The appellants have, in compliance with Clause 3, paid 95% of the purchase price amounting to \$171,000/-. There was considerable delay on the part of the respondents in completing the building of the house which was finally completed in November 1974. On the 28th November 1974 the relevant authority issued a Temporary Occupation Licence granting permission for the house to be occupied. The respondents offered to hand over possession of the house to the appellants on the 1st December 1974 but the appellants refused to take possession asserting that they were entitled to refuse 50 possession until completion of the sale. Subsequently however, before completion, the appellants took possession of the house on the 17th April 1975. The respondents failed to give Notice to Complete on the appointed date which fell on the 31st December 1973 as stipulated under Clause 11 and eventually

In the Court
of Appeal

No12

Written
Judgment

24th November
1978

(continued)

gave the requisite Notice to Complete which was served on the appellants on 7th December 1975.

Before the High Court hearing the respondents had admitted liability for damages calculated in accordance with Clause 11 up to the date when the Temporary Occupation Licence was issued and the damages so calculated have been paid to the appellants. The issue in the High Court was whether the appellants were entitled to damages as stipulated in Clause 11 from 29th November 1974 to the date when the Notice to Complete was served on them on 7th December 1975. Choor Singh, J. held, on the undisputed facts, that the appellants were not so entitled. He held that the appellants' claim was in essence a claim for compensation for financial loss. He found that the appellants had no valid reason for refusing to take possession of the completed house when possession was offered to them by the respondents on the 1st December 1974 following on the issue of the Temporary Occupation Licence on the 28th November 1974. In respect of the period 1st December 1974 to 16th April 1975 Choor Singh, J. took the view that the appellants could have been in occupation of the house and had no valid reason for not taking possession of it when offered. In respect of the period after the appellants took possession on 17th April 1975 Choor Singh, J. found that as they were in possession they suffered no financial loss.

The appellants now appeal and contend that on the true construction of Clause 11 of the contract they were entitled to the liquidated damages as therein specified. They contend that the payment stipulated in Clause 11 was not in the nature of a penalty but was in truth liquidated damages. In our opinion the agreement between the parties is similar to a building contract. The contract contains a definite date from which liquidated damages for delay in giving a notice to complete are to run. The provision in question, having regard to all the terms of the contract, is clearly a genuine pre-estimate of the loss which is likely to flow from a breach of the contract and accordingly is recoverable without proof of the actual loss suffered. The fact that it is difficult to ascertain the loss caused to the purchaser by delay in giving a notice to complete indicates that the provision to pay a sum as specified in

Clause 11 is in the nature of liquidated damages so long as the sum specified as payable is not excessive.

In the Court
of Appeal

No.12

In the present case it is clear that the sum specified as payable is not excessive having regard to all the terms of the contract.

Written
Judgment

24th November
1978

(continued)

10

It is contended on behalf of the respondents that they were unable to give the Notice to Complete as provided by Clause 11 because they were then unable to make title to the land and premises for reasons beyond their control in that the competent authority had delayed in issuing a Certificate of Title for the land in question. We are unable to see how this difficulty can affect the bargain agreed upon by the parties.

20

In the result, the appeal succeeds and the appellants are entitled to judgment calculated in accordance with the provisions of Clause 11 for the period 29th November 1974 to 7th December 1975. The appellants are also entitled to costs here and in the High Court.

Sgd. Wee Chong Jin
CHIEF JUSTICE,
SINGAPORE.

30

Sgd. F.A.Chua
(F.A.Chua)
JUDGE

Sgd. D.C.D'Cotta
(D.C.D'Cotta)
JUDGE

Singapore 24th November 1978.

Certified true copy

Sgd.

40

Private Secretary to the
Hon. the Chief Justice
Supreme Court
Singapore.

In the Court
of Appeal

No. 13

No.13

Order granting
leave to Appeal
to the Judicial
Committee of
the Privy
Council

ORDER OF COURT OF APPEAL
GRANTING LEAVE TO APPEAL
TO THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

19th March 1979

CIVIL APPEAL NO. 57 OF 1977

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Appellants 10

And

Phoenix Heights Estate
(Pte) Ltd. Respondents

In the matter of Suit No.4663 of 1975

Between

1. Lee Kay Guan
2. Ong Kim Liong (m.w.) Plaintiffs

And

Phoenix Heights Estate
(Pte) Ltd. Defendants 20

Coram:- The Honourable Mr. Justice F.A.Chua
The Honourable Mr. Justice Choor
Singh, and
The Honourable Mr. Justice A.P.Rajah

O R D E R

UPON Motion preferred unto the Court
by Counsel for the abovenamed Respondents
coming on for hearing this day in the
presence of Counsel for the abovenamed
Appellants AND UPON READING the Notice of
Motion dated the 20th day of February 1979
and the affidavit of Mrs. Mary Goh filed
herein on the 20th day of February 1979 and
the affidavit of Lee Kay Guan filed herein
on the 1st day of March 1979 IT IS ORDERED
that :-

1. Leave under Section 3(1)(a)(i), (ii) and

(iii) of the Judicial Committee Act (Cap.8) to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the whole of the judgment of the Court of Appeal delivered herein at Singapore on the 24th day of November 1978 be and is hereby granted

10

2. The taxed costs of both the Court of Appeal and the Court below be paid to the Appellants' solicitors within 6 weeks from the date hereof on the Appellants' solicitors' usual undertaking, and
3. The security for costs of this appeal to the Privy Council be paid within 6 weeks from the date hereof.

Dated the 19th day of March 1979.

Sgd.
ASST. REGISTRAR

In the Court
of Appeal

No. 13

Order
granting
leave to
Appeal to
the Judicial
Committee of
the Privy
Council

19th March
1979

(continued)

EXHIBIT

1.

Sale and
Purchase
Agreement

6th January
1973

EXHIBIT

1.

SALE AND PURCHASE
AGREEMENT

AN AGREEMENT made the 6th day of January One thousand nine hundred and seventy-three (1973) BETWEEN PHOENIX HEIGHTS ESTATE (PTE) LTD. a Company incorporated in Singapore duly licensed under the Housing Developers (Control and Licensing) Act Cap.250 of the 1970 Revised Edition (Licence No.145) and having its Registered Office at No.23, Holland Rise, Singapore, 10 (hereinafter called "the Vendor") of the one part and LEE KAY GUAN and ONG KIM LIONG both of No.127 Upper Bukit Timah Road, 8 m.s. Singapore, Storekeeper and Housewife respectively (hereinafter called "the Purchaser") of the other part

WHEREBY IT IS AGREED by and between the parties hereto as follows :-

1. The Vendor shall sell and the Purchaser shall purchase free from encumbrances the land described in the First Schedule hereto being one of the building plots in the building estate now being developed by the Vendor and known as PHOENIX HEIGHTS Singapore (hereinafter referred to as "the Estate") TOGETHER with a detached bungalow (hereinafter called "the Building") erected thereon or now in the course of erection thereon subject to the following special conditions and to the conditions of sale by public auction known as "The (Revised) Singapore Conditions of Sale" so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the special conditions herein.

2. The purchase price shall be Dollars One hundred and Eighty Thousand only (\$180,000/-).

3. The purchase price shall be paid by the Purchaser to the Vendor by the instalments and at the times following, that is to say:-

(a) Immediately upon the signing of this Agreement a sum equivalent to 10% of the purchase price such sum to include the booking fee if any paid.

(b) Within fourteen (14) days after

receipt by the Purchaser of the Vendor's notice in writing that the foundation work of the building has been completed a sum equivalent to 10% of the purchase price.

EXHIBIT
1.

Sale and
Purchase
Agreement

6th January
1973

(continued)

- 10 (c) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the reinforced concrete framework of the building has been completed a sum equivalent to 15% of the purchase price.
- (d) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the brick walls of the building with door and window frames in position have been completed a sum equivalent to 15% of the purchase price.
- 20 (e) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the roofing and internal plastering of the building have been completed a sum equivalent to 15% of the purchase price.
- 30 (f) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the electrical wiring and plumbing (without fittings) to the building have been completed a sum equivalent to 10% of the purchase price.
- 40 (g) Within fourteen (14) days after receipt by the Purchaser of the Vendor's notice in writing that the Vendor's Architect has certified that the roads and drains serving the building have been completed a sum equivalent to 15% of the purchase price.
- 50 (h) On completion of the sale and purchase herein as hereinafter provided and on delivery to the Purchaser of vacant possession of the property sold the balance of 10% of the purchase price, 5% of which shall forthwith be paid to the Vendor and the remaining 5% shall be paid to the Purchaser's Solicitors as stakeholders to be paid to the Vendor only on production of the Certificate of Fitness for Occupation

EXHIBIT
1.

of the Chief Building Surveyor in
respect of the building.

Sale and
Purchase
Agreement

6th January
1973

(continued)

Every such Notice shall be supported
by the requisite certificate of the Vendor's
Architect and shall be accepted without
objection or enquiry as conclusive of the
fact that the works therein referred to have
been completed.

~~(Alternative clause in the case of
mortgage)~~

10

~~3.---On completion of the sale and purchase~~
herein as hereinafter provided the Vendor
and/or Mortgagee procured by the Vendor
shall lend to the Purchaser the sum of \$
such loan to be secured by a mortgage of
the property sold and to be repaid with
capitalised interest not exceeding twelve
per centum (12%) per annum by instalments
over a period of not less than ()
years. In such a case the purchase price
shall be paid by the Purchaser to the Vendor
by the instalments and at the times following
that is to say :-

20

- (a) Immediately upon the signing of
this Agreement a sum equivalent to
10% of the purchase price such sum
to include the booking fee if any
paid.
- (b) Within fourteen (14) days after
receipt by the Purchaser of the
Vendor's notice in writing that the
foundation work of the building
has been completed a sum equivalent
to 10% of the purchase price.
- (c) Within fourteen (14) days after
receipt by the Purchaser of the
Vendor's notice in writing that the
reinforced concrete framework of the
building has been completed a sum
equivalent to 15% of the purchase
price.
- (d) Within fourteen (14) days after
receipt by the Purchaser of the
Vendor's notice in writing that the
brick walls of the building with
door and window frames in position
have been completed the sum of
\$

30

40

~~(e) On completion of the sale and pur-
chase herein as hereinafter provided~~

50

10 ~~---and-on-delivery-to-the-Purchaser---~~
of vacant possession of the property
sold the balance of \$ of
which \$ shall be paid to the
Vendor and the residue thereof
(i.e. \$ equivalent to 5% of
the purchase price shall be paid
to the Purchaser's Solicitors as
stakeholders to be paid to the
Vendor only on production of the
Certificate of Fitness for Occupa-
tion of the Chief Building Surveyor
in respect of the building.

Every such Notice shall be supported by
the requisite certificate of the Vendor's
Architect and shall be accepted without
objection or enquiry as conclusive of the
fact that the works therein referred to have
been completed.

20 4. Time shall be of the essence of the
contract in relation to all the provisions
of this Agreement as shall relate to the
payment of any instalment of the purchase
price or any part thereof.

30 5. If any of the instalments referred to
in Clause 3 hereof shall remain unpaid by the
Purchaser at the expiration of the said period
of fourteen (14) days (and in this respect
time shall be of the essence) interest on such
unpaid instalment or instalments shall
commence to run immediately thereafter and be
payable by the Purchaser such interest to be
calculated from day to day at the rate of
twelve per centum (12%) per annum. If any
of such unpaid instalments and interest shall
remain unpaid for any period in excess of
forty (40) days after its due date the Vendor
shall be entitled at its option on giving to
40 the Purchaser or his Solicitors not less than
thirty (30) days' notice in writing to treat
this Agreement as having been repudiated by
the Purchaser and (unless in the meanwhile
such unpaid instalment and interest shall
have been paid) this Agreement shall at the
expiration of the said notice (and in this
respect time shall be of the essence) be
annulled and in such an event :-

50 (a) The Vendor shall be entitled to
deal with or otherwise dispose of
the property sold in such manner
as the Vendor shall see fit as if
this Agreement had not been entered
into.

EXHIBIT

1.
Sale and
Purchase
Agreement
6th January
1973
(continued)

- (b) The instalments previously paid by the Purchaser to the Vendor excluding any interest paid shall be dealt with and disposed of as follows :-
- (i) Firstly all interest calculated up to the date of expiration of the said notice owing and unpaid shall be paid to the Vendor
 - (ii) Secondly a sum equivalent to 25% of the balance thereof shall be paid and forfeited to the Vendor and 10
 - (iii) Lastly the residue thereof shall be refunded to the Purchaser.
- (c) Neither party hereto shall have any further claims against the other for costs damages compensation or otherwise hereunder.
- (d) Each party hereto shall pay its own costs in the matter. 20

6. The title to the property sold shall be properly deduced. The Purchaser shall not require the delivery or production of any deeds not in the Vendor's possession nor shall the Purchaser make any requisition or objection in respect thereof.

7. The building shall be constructed in a good and workmanlike manner in accordance with the Specifications described in the Third Schedule hereto and in accordance with plans approved by the Chief Building Surveyor or other Competent Authority which Specifications and plans have been accepted and approved by the Purchaser as the Purchaser hereby acknowledges. No changes thereto or deviations therefrom shall be made without the mutual consent of the Purchaser except such as may be required by the Competent Authority or Local Authority, and such as may be certified by the Vendor's Architect as expedient or necessary. The Purchaser shall not be liable for the cost of such changes or deviations and shall not be entitled to any reduction in the purchase price herein or to any damages in respect thereof. 30 40

8. The Vendor shall at its own cost and expense cause to be constructed the roads driveways drains culverts sewerage mains and sewerage plant serving the building in accordance with the requirements and standards of the Local Authority. 50

The Vendor shall at its own cost and expense cause to be laid all necessary water electricity and sewerage mains to serve the building and cause the internal mains and the sanitary installations of the building to be connected to the water electricity and sewerage mains of the Local Authority or the sewerage plant in the Estate.

EXHIBIT
1.

Sale and
Purchase
Agreement
6th January
1973

(continued)

10 9. The Purchaser will be liable for and pay all turning on fees for the supply of electricity, gas and water to the building.

20 10. The Vendor shall at its own cost and expense obtain the approval of the Competent Authority under Section 9(3) of the Planning Act, Cap.279 of the 1970 Revised Edition for the subdivision of the property sold but any delay in obtaining such approval shall not be a ground for any delay by the Purchaser in the payment on due date of any of the instalments of the purchase price hereinbefore referred to in Clause 3 hereof and the interest thereon (if any).

30 11. The sale and purchase herein shall be completed at the office of the Vendor's Solicitors Messrs. Guok & Ganesan of No.11, D'Almeida Street, Singapore fourteen (14) days after the receipt by the Purchaser or his Solicitors of the Notice to Complete of the Vendor's or of its Solicitors such
40 notice to be accompanied by the Vendor's Architects' certificate that the building and road drainage and sewerage works have been completed in accordance with the relevant approved plans and that sewerage water and electricity and/or gas services have been duly connected to the building and that the said approval of the Competent Authority for subdivision has been obtained. On completion, the Vendor shall make and execute to the
50 Purchaser an assurance of the property sold such assurance to be prepared by and at the expense of the Purchaser. The said Notice to Complete shall be given by the Vendor on or before the 30th day of June 1973 or such other subsequent date or dates as may after the date hereof be appointed by the Controller of Housing. If the Vendor shall fail to give the said Notice to Complete on the appointed date the Vendor shall pay to the Purchaser liquidated damages calculated from day to day in respect of the period commencing from the appointed date up to the date when the said Notice to Complete shall have actually been given at the rate of nine per centum (9%) per annum on the purchase price such interest to be paid and deducted from the balance of the purchase price

EXHIBIT

1.

Sale and
Purchase
Agreement

6th January
1973

(continued)

payable on completion.

12. Upon payment of the whole of the purchase price and interest (if any), and all other moneys as may be due by the Purchaser to the Vendor in respect of the building or under this Agreement and upon completion of the sale and purchase herein vacant possession of the property sold shall be delivered to the Purchaser.

13. The Vendor shall pay and be liable for all Government Resurvey fees payable in respect of the property sold and shall also furnish to the Purchaser the requisite conveyance plans in respect thereof. The Purchaser shall on demand pay to the Vendor the sum of \$750/- as contribution towards such fees and plans. 10

14. The Purchaser shall not without the previous written consent of the Vendor carry out or cause to be carried out any deviation from the said plans and specifications or any alteration or addition to the building or install or cause to be installed any fixture or fitting therein until the relevant Certificate of Fitness for Occupation in respect thereof shall have been issued by the Chief Building Surveyor. 20

15. The Vendor will do all acts and things necessary to procure the issue of the relevant Certificate of Fitness for Occupation of the Chief Building Surveyor in respect of the said building and will at its own costs and expense comply with all requirements of the Chief Building Surveyor which are conditions precedent to the issue of such Certificate of Fitness and undertakes to produce such Certificate of Fitness to the Purchaser when issued. The Vendor and its workmen and agents shall be entitled (if necessary) at any time after completion of the sale and purchase herein and prior to the issue of the said Certificate of Fitness to make such alterations and/or additions to the building as may be required by the Chief Building Surveyor and the Purchaser shall allow them access into the property sold at all reasonable times for the purpose. All other notices (if any) of the Local Authority served on or after the date hereof shall be complied with by and at the expense of the Purchaser. 30 40

16. Any defect shrinkage or other fault in the building which shall become apparent within a period of six (6) calendar months after the date of delivery of vacant possession to the Purchaser or after the date of issue of the said Certificate of Fitness for Occupation 50

(whichever shall be the earlier) and which shall be due to defective workmanship or materials or to the building not having been constructed in accordance with the said Specifications and plans (amended or unamended as the case may be) shall be made good by the Vendor at its own cost and expense within one month of its having received written notice thereof from the Purchaser.

EXHIBIT
1.

Sale and
Purchase
Agreement
6th January
1973

(continued)

10 17. If as a result of the introduction of
any new laws bye-laws rules or regulations
or the amendment of existing laws bye-laws
rules or regulations it shall be imposed on
the Vendor and the Vendor shall become liable
to pay any new or additional fees or charges
or impositions save and except any increase
in the cost of building materials labour and
transport charges the payment of which shall
20 be a condition precedent for continuing and
completing the development of the phase of
the Estate hereinafter referred to in Clause
22 hereof or any part or parts thereof in
accordance with the layout plans and specifi-
cations herein referred to and the due
observance and performance by the Vendor of
its obligations and liabilities hereunder the
Purchaser shall refund to the Vendor a
30 proportionate part of such new or additional
fees charges or impositions upon production
to the Purchaser of the relevant receipts for
the payment of the same by the Vendor.

18. The area of the property sold as
mentioned in the said First Schedule hereto
or as appearing in the said conveyance plans
shall be deemed to be correct final and
conclusive and no adjustment in the purchase
price herein will be made if on completion
of resurvey by Government such area shall be
40 found to be more or less than that mentioned
in the said First Schedule or appearing in
the said conveyance plans.

19. The property is sold subject to all road
backlane and other improvement schemes what-
ever affecting the same and to the proposals
contained in the Master Plan.

20. The wall separating the building (if the
same is not a detached building) from the
adjoining building or buildings shall be deemed
to be a party wall or party walls as the case
50 may be and shall be maintained and kept in
repair from time to time at the joint cost
and expense of the owners for the time being
of the buildings separated thereby and the
assurance in favour of the Purchaser shall
contain a declaration to this effect.

EXHIBIT

1.

Sale and
Purchase
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1973

(continued)

21. There shall in the said assurance to the Purchaser be granted to the Purchaser and his executors administrators and assigns the owners and occupiers for the time being of the property sold and all tenants agents servants and other persons for the time being authorised by the Purchaser full and free rights and liberty in common with the Vendors and all other persons having the like right and liberty with or without horses and other animals carts carriages motor-cars and other vehicles of every description at all times and for all purposes whatsoever connected with the use and enjoyment of the property to pass and repass along over and upon the whole length of the private roads in the Estate providing access to the property sold and to lay over on and under the same all such pipes culverts cables and drains for the purpose of the supply of water gas or electricity to or the drainage or sewerage of any house or building now erected or hereafter to be erected on the property sold the Purchaser making good nevertheless at his expense all damage or disturbance caused thereby and also a similar right to make all connections to and similarly to use the septic tank or sewerage plant now or hereafter to be constructed in the Estate and the pipes and drains incidental to the proper use of the said septic tank or sewerage plant. There shall also be reserved to the Vendors and all others to whom the Vendors may grant or has already granted the same or similar rights of way and drainage and of making connections as aforesaid the right to construct lay and use any drains pipes or cables over or under the property sold which the Vendors or such others may in their his or her absolute discretion consider necessary for the purpose of serving other houses or buildings now erected or hereafter to be erected on the lands comprised in the Estate or any part or parts thereof and to make all necessary connections thereto.

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22. The property sold is one of the building plots comprised in a section of the Estate intended to be developed as Phase One, the layout of which has been duly approved by the Competent Authority. No amendments to the approved layout relating to such Phase shall be made or carried out except such as may be required by the Competent Authority, local or other Government Authority or as may be certified by the Vendors' Architect as expedient and necessary. The sales of all building plots comprised in the said Phase One shall be subject to the restrictive covenants and other covenants and conditions set

50

out in the Second Schedule hereto. The property sold is accordingly sold subject to the said covenants and conditions and the assurance of the property sold to the Purchaser shall contain a covenant by the Purchaser in the form set out in the said Second Schedule to perform and observe the same.

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1.

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(continued)

10 23. Any notice, request or demand requiring to be served by either party hereto to the other under the provisions of this Agreement shall be in writing and shall be deemed to be sufficiently served :-

20 (a) if it is given by the party or his or its Solicitor or Solicitors by post in a registered letter addressed to the party to be served at his or its address hereinbefore mentioned and in such a case it shall be deemed (whether it is actually delivered or not) to have been received at the time when such registered letter would in the ordinary course be delivered; or

(b) if it is given by the party or his or its Solicitor or Solicitors and despatched by hand to the party to be served or his or its Solicitor or Solicitors.

30 24. Notwithstanding completion of the sale and purchase herein, the terms and conditions of this Agreement shall remain in full force and effect as between the Vendor and the Purchaser in so far as the same are not fulfilled.

40 25. In this Agreement unless there be something in the subject or context inconsistent therewith, words importing the singular number or the masculine gender only include the plural number or the feminine gender and words importing persons include corporations and the expressions "the Vendor" and "the Purchaser" include their respective successors in title.

AS WITNESS the hands of the parties hereto the day and year first above written.

THE FIRST SCHEDULE ABOVE REFERRED TO

50 ALL that piece or land situate in the District of Jurong in the Republic of Singapore known as Private Lot 74 Phoenix Heights estimated to contain an area of 6,300 square

EXHIBIT
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Sale and
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(continued)

feet being part of Government Resurvey
Lot 217 of Mukim X forming part of the land
comprised in Statutory Land Grant No.21545
and more particularly delineated and coloured
red on the plan attached hereto and TOGETHER
WITH the building erected or in course of
erection thereon.

THE SECOND SCHEDULE ABOVE REFERRED TO

The Purchaser for himself and his
executors administrators and assigns with the
intent and so that the covenants hereinafter
contained shall run with and be binding upon
the property sold into the hands of whomsoever
the same may come, and shall ensure for the
benefit of the whole or any part or parts
of the lands comprised in the Estate and so
that such covenants and conditions shall so
far as practicable be enforceable by the
Vendor or other the owners occupiers for the
time being of the lands comprised in the
Estate or any part or parts thereof but not
so as to render the Purchaser or other the
owner for the time being of the said property
hereby conveyed personally liable in damages
for any breach of any of the said covenants
and conditions which are restrictive of the
user of the said property after he she or
they shall have parted with all interest
therein hereby covenants with the Vendor its
executors administrators and assigns to observe
and perform the following restrictive and
other covenants and conditions namely :-

- (a) That until all the roads in the
Estate providing access to the said
property and also all culverts pipes
cables sewerage and water drains
and septic tank or tanks or other
sewerage plant or plants now or
hereafter erected made or constructed
on over or under the Estate are
taken over and maintained by the
relevant Local Authority the
Purchaser will from time to time
contribute a fair and rateable
proportion of the costs of maintain-
ing and keeping in a proper state
of repair and condition the said
roads culverts pipes cables sewerage
and water drains and septic tank or
tanks or other sewerage plant or
plants such proportion in case of
difference to be ascertained at the
option of the Vendor by a qualified
surveyor appointed by the Vendor or
by an arbitrator or arbitrators

appointed for that purpose in terms of the Arbitration Act Cap.16 of the 1970 Revised Edition or any statutory modification or re-enactment thereof for the time being in force.

EXHIBIT

1.

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(continued)

10

- (b) Until the septic tank or tanks or other sewerage plant or plants serving the Estate shall be taken over and maintained by the relevant Local Authority and maintenance charges become due and payable to them to pay as maintenance charges to the Vendor without demand on the first day of every calendar month the sum of \$2.00 per month for each water closet connected to such septic tank or tanks or other sewerage plant or plants.

20

- (c) Not to do or suffer on the said property or in or upon any house or building erected thereon any matter or thing of any kind whatsoever which may be or become a nuisance or annoyance to the Vendor or the person or persons for the time being owning or occupying any lands comprised in the Estate or any other lands or premises which may be adjacent or adjoining to or in the neighbourhood of the said property.

30

- (d) Not to use any dwelling house or other building now erected or hereafter to be erected on the said property or any part thereof or permit the same to be used for any purpose other than as a private dwelling house and not to display on any part thereof any signboard save and except one designating the number of the said dwelling house and the name of the street and name of the occupier thereof.

40

- (e) Not to use any part or parts of the said property or any dwelling house or other building now erected or hereafter to be erected thereon or any part thereof for the storage of any merchandise whatsoever.

50

- (f) Not at any time to alienate any estate or interest in the said property or any part thereof without imposing the covenants and conditions contained in the preceding sub-clauses and the

EXHIBIT
1.
Sale and
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(continued)

covenants contained in this sub-clause upon all or any person or persons to whom he shall so alienate such estate or interest in the said property or any part thereof.

PROVIDED ALWAYS that nothing herein contained shall place or be deemed to place on the Vendor any obligation to enforce or effectuate the said covenants and conditions or any of them against the purchaser or purchasers of any other land or lands forming part of the Estate or to impose the same or any of them on such purchaser or purchasers RESERVING NEVERTHELESS to the Vendor the free right so far as the Vendor has power so to do to vary or alter the existing scheme for the laying out of the Estate or any part or parts thereof or any of the said covenants and conditions in any manner the Vendor may deem fit. 10 20

THE THIRD SCHEDULE ABOVE REFERRED TO

(Building Specifications)

Structure

All cement, mild steel bars, granite and sand to be used for concreting will be of approved manufacture complying with Local Building By-laws.

Bricks

All internal and external walls will be built with well-burnt clay bricks and finished with cement plaster. 30

Roofing Tiles

Roof will be covered with either "Alexandra" or "Redland" interlocking coloured cement tiles to Architect's selection.

Roof Timbers

All roof timber will be of "Damar" and treated with good quality wood preservative.

Ceiling

All 1st floor ceilings will be provided with soft-boards. 40

Windows

(Detached & Duplex Houses)

All window frames and sashes shall be of well seasoned Kapur fixed with $\frac{1}{4}$ " tinted/plain glass panels and whitco stay.

(Terrace Houses, Shops & Flats)

All window frames shall be of well seasoned Kapur with adjustable glass louvres, or fixed glass louvres and fixed timber louvres.

10

Doors

(Detached & Duplex Houses)

The main glass panel door shall be of Aluminium sliding door with $\frac{1}{4}$ " tinted/plain glass. All flush sheeted internal doors shall be lined with good quality teak and water proof (all external and bathroom doors) plywood and painted on completion.

(Terrace Houses)

Entrance door shall be hardwood with $\frac{1}{4}$ " tinted/plain glass panels and fixed timber louvres. All flush sheeted doors shall be lined with good quality plywood and painted on completion.

20

(Flats)

Front doors shall be of hardwood with $\frac{1}{4}$ " tinted/plain glass panels and fixed timber louvres. All flush sheeted doors shall be lined with good quality plywood and painted on completion.

30

(Shops & Flats)

All flush sheeted internal and external doors shall be lined with good quality plywood and painted on completion. For ground floor shops front only, ordinary hardwood timber shutters will be provided and painted on completion. $\frac{1}{4}$ " thick m.s. plate door with angle frames will be provided to the rear entrance of the shops where exposed to weather.

40

Locks

All ironmongery will be of good quality.

EXHIBIT

1.

Sale and
Purchase
Agreement

6th January
1973

(continued)

EXHIBIT

1.

Sale and Purchase Agreement

6th January 1973

(continued)

Decoration

All external and internal walls will be painted with "Snowcem". All wood and metal work will be painted with good quality gloss paint.

Built-in wardrobes

(Detached & Duplex Houses)

Built-in wardrobes will be provided in all master and second bedrooms.

(Terrace Houses & Flats)

10

Built-in wardrobes will be provided to all master bedrooms.

Flooring

(Detached & Duplex Houses)

Ground Floor: Terrazzo Tiles with 4" skirting for the following locations :-

Lounge, Study and Dining Room including steps leading from Lounge to Dining Room.

Mosaic Tiles for the following locations :-

20

Bathrooms, Kitchen, W.C. Verandah and Terrace (with 4" skirting, coves and nosing)

Cement Rendering for the following locations :-

Car Porch, Driveway, Store and Wash area.

First Floor & Upper Floor: Teak Parquet Floor with 4" x 1" Teak skirting to the following locations :-

30

All bedrooms (4 nos) Family Hall and Staircase (from Ground to First Floor).

Mosaic Tiles to the following locations :-

All bathrooms (3 nos) and Front and Rear Balcony.

(Terrace Houses)

Ground Floor: Terrazzo tiles for the following area :-

40

(Terrace Houses) (cont'd)

EXHIBIT

1.

	Ground Floor: (cont'd)	Lounge & Dining area including steps. Mosaic Tiles for the following area :- Kitchen and Servant's W.C. Cement Rendering for the following area :- Car Porch, Driveway, Terrace, Store and Wash Area.	Sale and Purchase Agreement 6th January 1973 (continued)
10	First Floor:	Vinyl Asbestos for the following area :- All bedrooms (3 nos) Stair Hall, Staircase and Landing from ground to First Floor. Mosaic Tiles to the following area:- Front Balcony, Bathroom and Shower Room.	
20	Flats:	Terrazzo Tiles for the floors at the following locations :- Lounge & Dining Area. Mosaic tiles for the following locations :- Kitchen, Front Balcony, 2 bathrooms, W.C. and all bedrooms (2 nos.).	
30	Shop Houses:	Cement Rendering for the following areas :- Footway, Airwell and Wash Area. Mosaic Tiles with 4" skirting for the following area :- Shop, tea preparation area, Kitchen, Bath and W.C.	
40	First & Second Floor Flats:	All bedrooms (3 nos.) - Vinyl asbestos tiles Lounge/Dining - Vinyl asbestos tiles Balcony - Mosaic Tiles Kitchen - Mosaic Tiles Bathroom - Mosaic Tiles W.C. - Mosaic Tiles Staircases, Landing and Stairhall - Mosaic Tiles Gangway - Cement Rendering.	

Wall Tiles

Walls of the Kitchen, W.C. and Bathrooms and

EXHIBIT

1.

Sale and Purchase Agreement

6th January 1973

(continued)

Wall Tiles (cont'd)

Shower Rooms will be lined with 4" x 4" white glazed tiles to an average height of 4' 6".

Sanitary

Modern sanitation to be installed in accordance with the requirements of the Sanitary Department and the Architect's specifications.

Electrical Wiring

Concealed electrical wiring according to plans. 10

Fencing & Gates

5' 0" high chain link fencing which includes 3 strands of barbed wire will be provided around the property with one entrance gate.

Turfing

Spot turfing will be provided to all areas surrounding the building.

Kitchen

One good quality aluminium sink and built-in kitchen cabinet will be provided. 20

Driveway

One concrete driveway leading from the road to the car porch will be provided.

Hedges

Creepers will be planted along the boundary fronting the road.

SIGNED on behalf of the Vendor in the presence of :-) PHOENIX HEIGHTS ESTATE (PTE) LTD. 30
Sgd. Illegible Sgd. Illegible Director

SIGNED by the abovenamed Purchaser in the presence of :-) Sgd. Illegible
Sgd. Illegible Advocate & Solicitor

Exhibit 1
Sale & Purchase
Agreement
6th January 1973.
(continued)

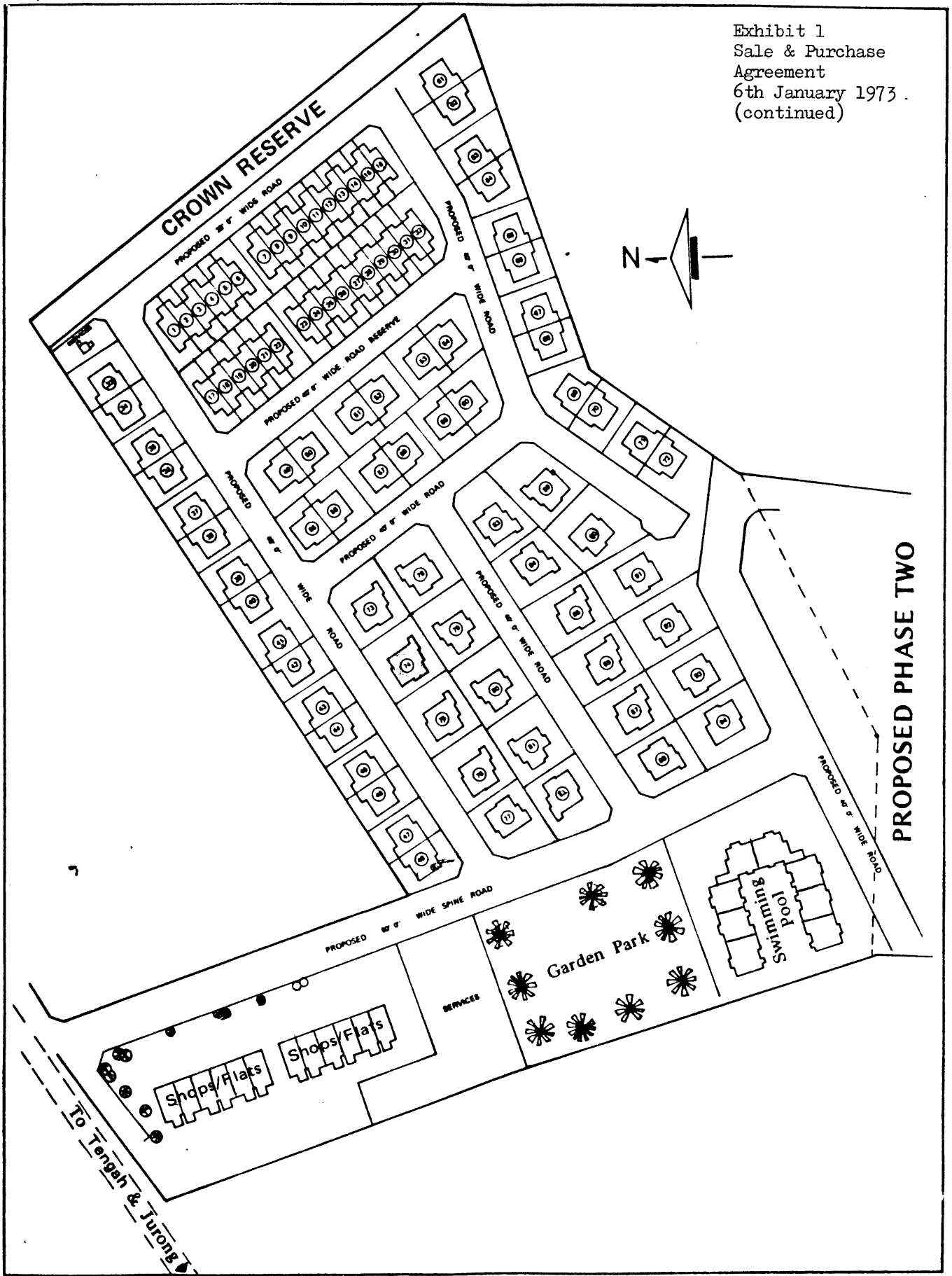


EXHIBIT
2.

Temporary
Occupation
Licence

28th November
1974

EXHIBIT
2.

TEMPORARY OCCUPATION LICENCE

PUBLIC WORKS DEPARTMENT,
(BUILDING CONTROL DIVISION),
SINGAPORE

Building Plan
No. 2W/75A/70

No. 12530

THE LOCAL GOVERNMENT (BUILDING) REGULATIONS
1966

10

(Regulation 34(3))

LICENCE FOR TEMPORARY OCCUPATION
(New Buildings)

I HEREBY give licence for the temporary
occupation of dwelling house No.-8 on
Lot 201-3, 216, 217 & 219, MKX at Phoenix
Garden for a period of 3 (three) months
from 28.11.74 to 27.2.75.

28 NOV 1974
Date

Sgd. Illegible

Assistant Director
(Building Control), PWD
as Building Authority

20

To: M/s Phoenix Heights Estate Ltd.
c/o M/s Lee Kum Kid
10, Newton Rd.,
S'pore 11.

No. 15 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

PHOENIX HEIGHTS ESTATE (PTE) LTD

Appellants
(Defendants)

- and -

1. LEE KAY GUAN
2. ONG KIM LIONG

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

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

Solicitors for the
Appellants

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

Solicitors for the
Respondents