

# Specific performance as a relief in the sale of land – no foregone conclusion



By Jansen Lim

Past cases have shown that the courts are ordinarily willing to specifically enforce a contract for the sale of land. The rationale is that, unlike most other goods, no two pieces of land are identical (the *sui generis* rationale), thus rendering monetary damages an inadequate remedy. However, a recent High Court decision has demonstrated that, where damages are in fact an adequate remedy, then there can be no hesitation in denying a prayer for specific performance of that contract.

In *New Dennis Arthur & Anor v Greesh Ghai Monty & Anor* [2012] SGHC 122, the Defendants had exercised an Option to Purchase (OTP) the Plaintiffs' property on December 16th, 2010, and completion was scheduled on January 31st, 2011. However, during a second visit to the property on January 25th, 2011, the second Defendant, who was accompanied by the Plaintiff's housing agent (Loy), the Defendants' housing agent and a contractor, discovered water seepage problems within the property. For this reason, the Defendants refused to complete the purchase.

The Plaintiffs commenced legal action for the following relief, together with interest:

- Specific performance of the sale of the property and payment of \$1,957,000.00, being the balance purchase price;
- Specific damages flowing from the Defendants' refusal to complete; and
- Further and/or in the alternative, general damages to be assessed.

The Defendants, on the other hand, counterclaimed for a rescission of the sale and purchase agreement, arguing that the Plaintiffs' housing agent, Loy, had induced them into entering the contract by making misrepresentations as to the condition of the property.

The Honourable Justice Choo Han Teck, after assessing the evidence, held that even if Loy had falsely represented the condition of the property, such misrepresentations did not in fact induce the Defendants to enter into the contract. The Court

considered the following factors to be especially significant:

- The Defendants contended (but could not conclusively prove) that Loy had expressly told them that there were no water leakage problems with the property.
- On the facts, the Defendants had previously occupied a property beset by water leakage problems, which they could not resolve even after engaging multiple contractors to perform rectification works. They therefore knew (and did in fact concede at trial), that Loy did not have the requisite technical expertise to determine whether there was a water leakage problem. The Defendants' counterclaim was therefore dismissed.

What is significant, for this article, is that the Judge also dismissed the Plaintiffs' claim for specific performance. He reasoned at [12], that "*the present case is the obverse to the common situation where the purchaser is eager to complete and is seeking the specific performance of the sale of the property. Here, the plaintiffs, as vendors, are seeking to foist the property on the unwilling defendants, as purchasers. In such cases, the argument for allowing specific performance is considerably weaker since the sui generis rationale is not engaged. This is because the property does not have a 'particular value' to the vendor whose interest is purely financial in nature.*"

The Honourable Judge went on to state that because the Plaintiffs only had a financial interest in the sale of their property, their loss could be adequately compensated with monetary damages, and therefore ought not be granted the order for specific performance.

Further, because (a) the Plaintiffs' claim for general damages had not been particularised and quantified, and (b) the trial had not been bifurcated, the Court awarded the Plaintiffs only nominal general damages of \$1,000.00.

While in the final analysis, it can be said that the Defendants had obtained a very favourable outcome, it would have been interesting to consider the true measure of general damages that would have been awarded to the Plaintiffs in such a case.

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