

HONG KONG / JUDGMENT

CHIU SIU LAN v. BONDFIELD DEVELOPMENT LTD

COURT

District Court

DECIDED

22 August 2007

CASE / FILE NUMBER

DCCJ784/2007

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bjbj DCCJ784/2007 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION CIVIL ACTION NO. 784 OF 2007 BETWEEN CHIU SIU LAN Plaintiff and BONDFIELD DEVELOPMENT LIMITED Defendant Coram: Deputy District Judge A Yuen in Chambers Date of Hearing: 22 August 2007 Date of Delivery of Decision: 22 August 2007 D E C I S I O N This is a hearing for the disposal of the costs order nisi made by this court in its judgment handed down on 8 August 2007. Plaintiff applied for a summary judgment pursuant to order 14 of rule of District Court. After hearing submissions from both parties, court decided that there are triable issues to be resolved at trial and therefore ruled that plaintiff's application should be dismissed. Court also granted defendant unconditional leave to defend and made an order nisi that costs be to the defendant. Plaintiff argued that the usual costs order should be costs in the cause. Defendant argued that when plaintiff took out the order 14 summons, she should have been aware of defendant's defence which would entitle defendant an unconditional leave. Plaintiff's allegation was that there should be implied terms of reasonable time in the agreement and that defendant should exercise his due diligence to perform within this reasonable time. Plaintiff also argued that the subject matter, that is, the property of the agreement, which was described as amongst other thing, lot No. 1069, did not exist at all. Defendant's defence right in the outset disputed that there were those implied terms and argued that even if such implied terms, there was no breach. As to the existence of the subject matter, it is always the case that the property was identified in the plan which plaintiff had a copy in the possession. I found that plaintiff should have fully aware of defendant's argument that there were no such implied terms before she issued the order 14 summons. Equally, plaintiff should have fully aware of the plan which identified the property, be it labelled lot No. 1069 or otherwise, before she issued the order 14 summons. With this knowledge in mind, I found that it is a waste of time for plaintiff to insist pursuing the order 14 application, therefore I found the costs order in my judgment handed down on 8 August 2007 stands. I am minded to add to my costs order the following words, namely, in any event . I will make the following directions to party, that is, first, parties do file a list of documents within 14 days from the day hereof; second, mutual discovery of documents and exchange of witness statements within 42 days thereafter; and third, plaintiff be granted

leave to adduce expert evidence in relation to survey of land. Costs of this hearing, that is, today s hearing, be to the defendant in any event, to be taxed if not agreed. (Deputy District Judge A Yuen) Mr Stanley Siu, instructed by Messrs Deannie Yew and Associates, for the Plaintiff Mr Francis Yip, instructed by Messrs Ko & Chow, for the Defendant PAGE - PAGE ES-CRT9/22.8.2007/ KW DCCJ784/2007/Decision A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V ~wtw &`#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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