

HONG KONG / JUDGMENT

CREATE GAIN LTD v. WEALTHY INVESTMENT LTD

COURT

Court of First Instance

DECIDED

9 October 1992

CASE / FILE NUMBER

HCMP2272/1992

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bjbj HCMP002272/1992 IN THE SUPREME COURT OF. HONG KONG HIGH COURT
MISCELLANEOUS PROCEEDINGS

1992 No. MP 2255 IN THE MATTER of an Sub-Agreement for Sale and Purchase dated 29th July 1992 made between CREATE GAIN LIMITED as the Vendor and WIN MODE INDUSTRIES LIMITED as the Purchaser IN THE MATTER of Section 12 of the Conveyancing and Property Ordinance 1984

BETWEEN WIN MODE INDUSTRIES LIMITED Plaintiff CREATE GAIN LIMITED Defendant

1992 No. MP 2272 IN THE MATTER of an Agreement for Sale and Purchase dated 21st July 1992 made between WEALTHY INVESTMENT LIMITED as Vendor and CREATE GAIN LIMITED as Purchaser IN THE MATTER of a Sub-Agreement for Sale and Purchase dated 29th July 1992 made between CREATE GAIN LIMITED as Vendor and WIN MODE INDUSTRIES LIMITED as Purchaser IN THE MATTER of Section 12 of the Conveyancing and Property Ordinance 1984

BETWEEN CREATE GAIN LIMITED Plaintiff WEALTHY INVESTMENT LIMITED Defendant

Coram: The Hon. Mr. Justice Mayo in Court Date of Hearing: 9th October, 1992 Date of Delivery of Judgment: 9th October, 1992

J U D G M E N T

The originating summonses in both these cases were heard together. The reason for this was that they both related to essentially the same transaction. There were 2 Sale and Purchase Agreements whereby the purchaser under the Principal Agreement sold on the land to another purchaser as a confirmor. So far as the present case is concerned, the Plaintiff in MP2255/92, Win Mode Industries Ltd., who were represented by Mr. Chow complain that 2 requisitions on title were not satisfactorily replied to by the vendors of the property, Wealthy Investment Ltd., the Defendants in MP2272/92. Both requisitions related to discrepant signatures on deeds which were adduced as evidence to the vendors title to the property. The 1st requisition related to signatures signed by a Mr. Tang Chi Fai and the 2nd to signatures signed by Mr. Tang Chi Yuen. The complaint on the 1st requisition was that Mr. Tang Chi Fai's signature in the 1st and 3rd Assignments and in the District Registry Memorial on the 2nd Assignment were apparently different from each other. The matter complained of in the 2nd requisition is that the signature of Mr. Tang Chi Yuen in the 2nd Assignment Memorial and the 3rd Assignment referred to were apparently different. I must, say at once, having perused these signatures, that this complaint would appear to be well justified. Indeed, Mr. Chan for Wealthy Investments accepted that this was so. The consequence of this is that the presumption contained in s.23 of the Conveyancing & Property Ordinance ? C. 219 has no application. I think that it was agreed by all parties that a purchaser is entitled to demand "proper conveyancing evidence" that the signatures were signed by one and the same person and that circumstantial evidence will not suffice. The authority for this being the judgment of Godfrey J. in *Lam Kin I v Tsui Mina Yee* unreported being MP361/89. Godfrey J. expressed the view that the best evidence available would be a Statutory Declaration from the person whose signatures are being disputed declaring that he had in fact appended his signature to the documents in question. I accept that this is the best evidence. So far as the 1st requisition was concerned, Mr. Tang Chi Fai made 2 Statutory Declarations to this effect. The 1st Statutory Declaration which was produced as evidence when the vendor's solicitors dealt with the requisition did not contain any declaration concerning the signature appended to the 3rd Assignment referred to. However, after the commencement of these proceedings the vendor's solicitors did produce a further Statutory Declaration which repaired this omission. I have no doubt that the evidence which has now been produced is sufficient to satisfy the requisition raised by the purchaser's solicitors. In addition to the Statutory Declarations there was other evidence to support the proposition that all the various deeds and documents were signed by Mr. Tang chi Fai. When Mr. Fang executed the 2nd Assignment, he produced at the time of executing the instruments British Passport No. 0855349. When he executed the 3rd Assignment, he produced British Passport No. c495810A. It seems to be fairly clear that although these were different passports they were both issued to Mr. Tang. The fact that the passports were different passports distinguishes the case from *Leung Yau Tim v Ho Tak Man & Another* unreported being MP3752/90. In that case, Kaplan J. held that where the same Identity Card had been produced

when Deeds were executed on different occasions, this evidence of itself was sufficiently compelling to amount to "proper conveyancing evidence". The outcome of all of this, so far as the 1st requisition is concerned, is that sufficient evidence has now been produced to satisfy the requisition which was raised. I am doubtful though whether sufficient evidence was adduced at the time when the requisition was dealt with. This can, of course, be a matter of great significance. If requisitions are not satisfactorily complied with in accordance with the terms of the Sale and Purchase Contract, a party might be entitled to be released from their contractual obligations. This matter was considered by the court of Appeal in *Kok Chong Ho & Wong Mui v Double Value Developments Ltd.*, CA 96 of 1991 unreported. I am informed that in the present case the parties have agreed that the completion date has been extended to 16th October and accordingly the only implications arising from this aspect of the matter would be costs implications. I will now consider the situation concerning the 2nd requisition. A satisfactory form of Statutory Declaration made by Mr. Tang Chi Yuen was served on Win Mode's solicitors on 28th September. Prior to this, some evidence was adduced relating to the signatures in question. Like Mr. Tang Chi Fai, Mr. Tang chi Yuen was also required to produced his British Passport when executing the Assignments. He also had changed his passport so the observations I have made earlier are equally applicable. There was also evidence that the Chinese characters next to his name in the Assignments tallied. I am not though convinced that the evidence which was available prior to the introduction o the Statutory Declaration at a very late stage in these proceedings would have been sufficient to amount to "proper conveyancing evidence". The consequence of all of this is that I am prepared to make a Declaration that the evidence which is now available to satisfy the 2 requisitions raised is sufficient and that the requisitions have accordingly been complied with. However, for the reasons I have given, I consider that Win Mode were justified in commencing these proceedings and subject to any submissions which may be made by the parties, I would be disposed to order that they should have their costs. (Simon Mayo) Judge of the High Court Representation: Mr. Anderson Chow (Fairbairn Catley Low & Kong) for Plaintiff in MP No. 2255/92 Mr. Robert Pang (William A. Hui & Ko) for Defendant in MP No. 2255/92 and Plaintiff in PIP No. 2272/92 Mr. Samuel Chan (Augustine C.Y. Tong & Co.) for Defendant in MP No. 2272/92 - PAGE - uFwZvf HCMP002255/1992 Judiciary Hong Kong SAR Normal.dot Judiciary Hong Kong SAR Microsoft Word 9.0 ytgs HCMP002255/1992 Title Microsoft Word Document MSWordDoc Word.Document.8

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