

HONG KONG / JUDGMENT

FIRST VIEW DEVELOPMENT LTD v. PAT CITY LTD

COURT

Court of First Instance

DECIDED

13 November 2007

CASE / FILE NUMBER

HCA2071/2006

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bjbj HCA 2071/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE ACTION NO. 2071 OF 2006 BETWEEN FIRST VIEW DEVELOPMENT LIMITED Plaintiff and PAT CITY LIMITED Defendant Before : Hon Sakhrani J in Chambers Date of Hearing : 2 October 2007 Date of Judgment : 13 November 2007 J U D G M E N T AUTONUMOUT This is an application by the defendant for summary judgment under O. 86; r. 8 of the RHC for the relief claimed in the counterclaim. In the alternative the defendant seeks an order that the plaintiff do provide security for the defendant's costs of the action and that all further proceedings in this action be stayed until security is provided.

Background

AUTONUMOUT The plaintiff (the purchaser) was the purchaser of 3 shop premises (the 3 shops) known as shops G27, G28 and G29 on the ground floor of the Commercial Podium, Sincere House, 38 Argyle Street, Kowloon, Hong Kong. At all material times the 3 shops were registered in the name of the defendant (the vendor AUTONUMOUT By 3 provisional sale and purchase agreements all dated 10 March 2006 between the vendor and the purchaser (the provisional agreements) the vendor agreed to sell and the purchaser agreed to purchase respectively shops G27, G28 and G29 on the terms and conditions set out therein. Completion was to take place on 10 August 2006. AUTONUMOUT Pursuant to the terms of the provisional agreements the vendor and the purchaser entered into 3 separate formal sale and purchase agreements all dated 10 April 2006 (the agreements) for the sale and purchase of respectively shops G27, G28 and G29 on the terms and conditions set out therein which were the same for all 3 agreements. AUTONUMOUT Each of the shops was sold subject to existing tenancy. AUTONUMOUT By clause 2 and Part I of Schedule 3 of the agreements the purchase price for each of the shops was \$10,600,000. The purchase price was to be paid by the purchaser to the vendor as follows : \$300,000 being the initial deposit and part payment of the purchase price which was paid by the purchaser to the vendor's solicitors as stakeholders prior to the agreements; \$760,000 being the further deposit and in further payment of the purchase price to be paid by the purchaser to the vendor's solicitors as stakeholders upon signing of the

agreements; \$9,540,000 being the balance of the purchase price to be paid by the purchaser to the vendor on or before completion, and before 5 pm if completion shall take place on a weekday and before 1 pm if completion shall take place on Saturday. AUTONUMOUT By clause 3 and Part II of Schedule 3 of the agreements completion was to take place on or before 10 August 2006. AUTONUMOUT The purchaser duly paid the initial deposits and the further deposits in the total sum of \$3,180,000 in accordance with the agreements. AUTONUMOUT By letter dated 4 May 2006 from the vendor s solicitors to the purchaser s solicitors the vendor sent to the purchaser all the title deeds and documents set out in the Schedule annexed to the letter. One of the documents set out in the Schedule was a certified copy permit No. K224/94 dated 9 December 1994 (the permit AUTONUMOUT By letter dated 12 May 2006 the purchaser s solicitors by way of raising a requisition (the 1st requisition) requested the vendor s solicitors to produce certified copy approved plans dated 9 December 1994 as referred to in [the permit] the approved plans) for their approval. AUTONUMOUT By letter dated 24 June 2006 the vendor s solicitors replied stating that the approved plans did not form part of the title deeds and were not required to be produced for proving title. AUTONUMOUT After this there was no reply or objection or further requisition from the vendor s solicitors until 10 August 2006 shortly before the time for completion. Completion was to take place before 5 pm on that day. AUTONUMOUT By letter dated 1 August 2006 from the purchaser s solicitors to the vendor s solicitors it was alleged that the purchaser and vendor had agreed to extend the time for completion from 10 August 2006 to 10 November 2006 provided the purchaser pay the vendor on or before 10 August 2006 a sum of \$900,000 being interest for the balance of purchase price under the agreements. The letter was marked subject to contract AUTONUMOUT By letter also dated 1 August 2006 from the vendor s solicitors to the purchaser s solicitors it was denied that there was such an agreement to postpone completion. AUTONUMOUT At around 2.49 pm on 10 August 2006 the day of completion the vendor s solicitors received a letter from the purchaser s solicitors raising for the first time another requisition (the 2nd requisition). The letter stated that Our client has just been advised by its architect (who has only been able to render such advice after obtaining the relevant approved plans from the Buildings Department) that in the 3 Properties there are contraventions to Building (Planning) Regulations 72 and Design Manual Barrier Free Access, for the reason that there are not disabled access to any of the 3 Properties after the erection of 3 partition walls between Shop Nos. G27 and G89, between Shop Nos. G28 and G91 and between Shop Nos. G29 and G93 respectively after the relevant plans for the shopping arcade had been approved by the Buildings Department. Our client has further been advised that such contraventions will render the 3 Properties subject to enforcement actions by the Buildings Department, including the demolition of the 3 partition walls between Shop Nos. G27 and G89, between Shop Nos. G28 and G91 and between Shop Nos. G29 and G93 respectively. If the said partition walls had to be demolished, the 3 Properties would not longer be any self-contained shops as they are being sold under the sale and purchase agreements entered into between our respective clients. Enclosed please find a copy of the report of the architect for your reference. In the circumstances, your client s title to the 3 Properties is being affected and your client is required to have such title defect rectified. Please let us know as soon as possible how your client intend to deal with the same. For the avoidance of doubt, we place on record that our client will only be obliged to

complete the sale and purchase of the 3 Properties after your client has satisfactorily dealt with the above matter. AUTONUMOUT An investigation report by Daniel Tong an authorized person dated 10 August 2006 was also sent with the letter. AUTONUMOUT The vendor s solicitors replied on the same day referring to clause 11 of the agreements and taking the point that the 2nd requisition had been raised out of time and was deemed to be waived. They did not answer the 2nd requisition. AUTONUMOUT There was further correspondence between the solicitors on 10 August 2006. The purchaser s solicitors denied that the 2nd requisition was raised out of time and was deemed to be waived and insisted that the vendor was obliged to answer the 2nd requisition. AUTONUMOUT By letters dated 10 August 2006 the vendor s solicitors gave notices pursuant to clause 18 of the agreements that as the purchaser failed to complete the sale and purchase of the 3 shops the vendor exercised its right to determine the sale of the 3 shops and forfeited the deposits in the sum of \$1,060,000 under each of the agreements. The proceedings AUTONUMOUT By a writ of summons issued on 18 September 2006 the purchaser instituted proceedings against the vendor for: a declaration that the vendor wrongfully repudiated the agreements; a declaration that by reason of the wrongful repudiation of the agreements by the vendor, the purchaser was relieved of all liability for the further performance of its obligations thereunder; repayment of the total deposits in the sum of \$3,180,000; damages for breach of the agreements; a declaration that the purchaser is entitled to a lien on the 3 shops for the deposits and conveyancing expenses together with damages, interest and costs ; interest; and costs. AUTONUMOUT The statement of claim was filed on 3 October 2006. AUTONUMOUT The vendor filed a defence and counterclaim on 20 November 2006. By its counterclaim the vendor seeks : a declaration that the purchaser has wrongfully failed to complete the agreements and was in breach of its obligations thereunder; a declaration that by reason of the purchaser s breach of its obligations under the agreements the vendor was entitled to determine the agreements and forfeit the total deposits in the sum of \$3,180,000 as liquidated damages; interest; and costs. Any triable issue? AUTONUMOUT On the vendor s application for summary judgment Mr Chan, for the purchaser, submitted that there are triable issues as follows : whether the 2nd requisition was made out of time in the light of clause 11 of the agreements; whether the 2nd requisition was properly raised or has substance; whether there are disputes of fact which might affect the court s decision. AUTONUMOUT It is useful to bear in mind what Godfrey J (as he then was) said in *Unic Co v Centus Development Ltd* [1988] HKC 643 at 647 : The power to give summary judgment under Order 14 is intended to apply only to cases where there is no reasonable doubt that the Plaintiff is entitled to judgment and where therefore it is inexpedient to allow the Defendant to defend for mere purposes of delay : see *Jones v. Stone* [1894] AC 122. As a general principle, where a Defendant shows that he has a fair case for defence or reasonable grounds for setting up a defence, or even a fair probability that he has a bona fide defence, he ought to have unconditional leave to defend. Leave to defend must be given unless it is clear that there is no real substantial question to be tried, or that there is no dispute as to the facts or law which raises a reasonable doubt that the Plaintiff is entitled to judgment. Order 14 is not intended to shut out a Defendant who can show that there is a triable issue applicable to the claim as a whole from laying his defence before the court, nor to make him liable in such a case to be put on terms of paying into court as a condition of leave to defend. AUTONUMOUT What Godfrey J said in respect of an O.14 application applies equally to an

application for summary judgment under O.86. Clause 11 AUTONUMOUT Clause 11 of the agreements provided as follows Any requisitions or objections in respect of title shall be delivered in writing to the Vendor s solicitors within seven (7) working days after the date of receipt of the title deeds by the Purchaser s solicitors and any further objection or requisition arising upon any reply to a former requisition shall be so delivered within seven working days after the receipt of such reply otherwise the same shall be considered as waived (in which respect time shall be of the essence of this Agreement) AUTONUMOUT It is also important to bear in mind clauses 16 and 17 of the agreements. AUTONUMOUT By clause 16 the vendor had the obligation both to show and to give good title to the shops. AUTONUMOUT By clause 17 time in every respect was made to be of the essence of the agreements. AUTONUMOUT The 2nd requisition was raised very late and outside the time limit provided for under clause 11. It was only raised at about 2.49 pm on 10 August 2006 on the day of completion where completion was to be before 5 pm. AUTONUMOUT By the letter dated 10 August 2006 containing the 2nd requisition the purchaser s solicitors was making the point that the purchaser had just been advised by its architect that there were contraventions to Regulation 72 of the Building (Planning) Regulations Cap. 123 and the Design Manual Barrier Free Access as there was no disabled access to any of the 3 shops. AUTONUMOUT It appears from the evidence that in the approved plans of the building works to the Commercial Podium of Sincere House approved by the Buildings Department in 1994 there were no partition walls between shops G27 and G89, between shops G28 and G91 and between shops G29 and G93 on the ground floor of the Commercial Podium. The approved plans showed that disabled access could be gained from the internal corridors or passages of the Commercial Podium to the 3 shops through shops G89, G91 and G93 respectively. However, in carrying out the building works and without any approval from the Buildings Department, partition walls were erected between shops G27 and G89, between shops G28 and G91 and between shops G29 and G93 with the result that disabled access to shops G27, G28 and G29 could no longer be gained. AUTONUMOUT By the said letter the point was also made that the 3 shops would be subject to enforcement action by the Buildings Department. AUTONUMOUT Mr Ng, for the vendor, relying on Mexon Holdings Ltd v Silver Bay International Ltd [2000] 2 HKC 1 submitted that the 2nd requisition was raised out of time and on a construction of clause 11 of the agreements was deemed to be waived. AUTONUMOUT In Mexon the court came to the view that it was too late for the purchaser to raise the requisition in that case. AUTONUMOUT I would observe that in Mexon, unlike this case, the title documents sent to the purchaser s solicitors included a certificate by an architect stating that the internal partitioning work complied with the Building Ordinance Regulations. Also, in Mexon the court came to the view that it was not adequately explained why the requisition was as late as it was (per Bokhary PJ at page 10H). AUTONUMOUT Mr Chan submitted that the vendor did not supply a set of the approved plans to the purchaser in answer to the 1st requisition. The approved plans were only obtained by the purchaser s architect on or about 8 August 2006 from the Buildings Department and it was only then that the architect was in a position to advise the purchaser. Mr Chan relied on the evidence of Wong Hoi Ming in his affirmation filed on behalf of the purchaser and submitted that the purchaser has adequately explained why the 2nd requisition was raised so late. AUTONUMOUT Wong Hoi Ming states at paragraphs 16 to 18 of his affirmation as follows

16. On the other hand, in a lunch gathering in around mid-June 2006, a Mr. Ricky Choi (Mr. Choi), an estate agent, told me and Mr. Leung Chi Kit (Leung), the other director and shareholder (holding a Well Friendship International Limited) of the Plaintiff, that according to his knowledge, there were a few partition walls erected between Shops 27 and 89, Shops 28 and 91, and Shops 29 and 93 respectively (collectively the partition walls). Mr. Choi told me and Mr. Leung that according to his experience in dealing with the properties in the Mok (sic) Kok area, some partition walls may be erected but not shown on the approved plans submitted to the Buildings Department and he urged us to consider that carefully. Since by that time [the purchaser s solicitors] was still enquiring about the Approved Plans and [the vendor s solicitors] had still not furnished an answer, Mr. Leung and I decided to wait until [the vendor s solicitors] provided the Approved Plans for [the purchaser s solicitors] perusal. Our concerns over the Approved Plans grew upon the refusal to produce the Approved Plans by [the vendor s solicitors]. In particular, Mr. Leung and I were concerned about whether the existence of the partition walls would contravene with any of the building regulations or rules, such as those involving fire or disabilities. Mr. Leung and I also thought of the possibility of the scenario that should the Plaintiff, after purchasing the 3 premises, be ordered by the Buildings Department to build facilities to each of the shops, that would significantly reduce the net areas of the shops, rendering the value of those shops much diminished. Therefore, Mr. Leung and I started to look for surveyors to investigate the matters. I had tried to engage a Mr. Terrence Kwan (Kwan), surveyor, to investigate the matters in around July 2006 but unfortunately Mr. Kwan was unable to take up the engagement. In the end we were able to engage a Mr. Daniel K. H. Tong (Mr. Tong) who would investigate the matters. Mr. Tong prepared an investigation report dated 10 August 2006 (the Investigation Report) which is now produced and show to me marked WHM-6 . Mr. Tong stated in the Investigation Report that his firm had instruction from the Plaintiff on 9 August 2006 to carry out a site investigation and prepare an investigation report. This is not entirely correct. I had previously talked with Mr. Tong and Mr. Tong had already promised to investigate the matters. It can be seen that Mr. Tong had obtained the Building (A&A) Plans [Dwgs Nos.A-1 to 3 (Rev.6)] approved on 21.06.1994 under B.D. ref.2-3/4818/59 (2) (i.e. the Approved Plan) from the Buildings Department on 8 August 2006. AUTONUMOUT What Wong Hoi Ming states as set out above are disputed facts. These disputes of fact cannot be resolved on affidavit evidence. AUTONUMOUT Also, whether what Wong Hoi Ming says amounts to an adequate explanation for not observing the time limit for raising requisitions under clause 11 of the agreements is, in my view, a matter to be resolved at trial. It seems to me that it is arguable that there is an adequate explanation given by the purchaser for not observing the time limit under clause 11. A triable issue has been raised. AUTONUMOUT Mr Chan also relied on Billion Best (Hong Kong) Ltd v Amity Investment Co Ltd and another [2002] 1 HKLRD 392 where it was held that where there was a severe defect of title within the vendor s knowledge, but not known to the purchaser, it would be unconscionable for a vendor to rely on the clause limiting the time to raise requisitions. Mr Chan submitted that the vendor had the approved plans but refused to supply a set to the purchaser when the 1st requisition was raised. It was arguable, he

submitted, that the vendor knew of the unapproved building works but that the purchaser did not and hence it would be unconscionable for the vendor to rely on the time limit in clause 11 to prevent the purchaser from raising the 2nd requisition. In my view, the question of the extent of the vendor's knowledge is also a question of fact and this should be resolved at trial. Was the 2nd requisition properly raised? AUTONUMOUT Mr Ng relied on clause 12 of the provisional agreements and submitted that the purchaser was not entitled to raise the 2nd requisition. Clause 12 of the provisional agreements provided that The Property is sold to the Purchaser on an as is basis. The Purchaser has inspected the condition of the Property, and shall not raise requisitions, refuse or delay completion of the sale and purchase, on the ground that there are unapproved additional structures, alternations (sic) or illegal structures in the Property. AUTONUMOUT Mr Ng also relied on clause 7 of the agreements which provided that The Purchaser hereby declares and confirm that the Purchaser has duly inspected the existing physical state, condition and finishes of the Property and the fixtures and fittings therein and the Furniture and/or Appliances and is fully aware that he is purchasing the Property in its present state and condition. The Property is and will be sold on an as is basis and in the physical state and condition as it stands and no warranty or representation whatsoever has been given or is made by the Vendor or his agents regarding the physical state and condition thereof or of the building of which the Property forms part (the Building). In particular and without limiting the generality of the foregoing, no warranty or representation is given or made by the Vendor or his agents on any of the following matters, namely ...; The physical state and condition of the Property or of the Building or of any structures or erections therein or thereto; AUTONUMOUT It can be seen that clause 12 of the provisional agreements by providing that the purchaser shall not raise requisitions on the ground that there are, inter alia, unapproved alterations in the shops goes much further than what is provided in clause 7 of the agreements. Mr Chan submitted that the provisions of clause 12 of the provisional agreements do not apply as the provisional agreements were superseded by the agreements. He also relied on clause 29 of the agreements which provided that : This Agreement sets out the full agreement between the parties hereto and supersedes any other commitments, agreements, warranties or understandings, written or verbal, that the parties hereto may have had with respect to the subject matter of this Agreement AUTONUMOUT It seems to me that it is arguable whether the vendor can rely on clause 12 of the provisional agreements to prevent the purchaser from raising the 2nd requisition. AUTONUMOUT In All Ports Holdings Ltd v Grandfix Ltd [2001] 2 HKLRD 630 it was held that a provision for sale of property on an as is basis and a reference to its physical state and condition did not mean that it extended to illegal structures. AUTONUMOUT In Regent Summit (Hong Kong) Ltd v Smart Business (Asia) Ltd [1998] 2 HKC 718 it was held that the fact that the purchaser was aware of the alterations could not be regarded as a waiver of its right to raise requisitions on the title, or as an act implying acceptance of title in that respect. AUTONUMOUT In my view, it is also arguable whether the vendor can rely on clause 7 of the agreements to prevent the purchaser from raising the 2nd requisition in respect of the unapproved partitioning of the shops. On this also, a triable issue has been raised. AUTONUMOUT Mr Ng also submitted

that there was no substance in the 2nd requisition as neither the Building (Planning) Regulations Cap. 123 nor the Design Manual Barrier Free Access applied. In this context he relied on Mexon where Litton PJ said at page 7 that the Building (Planning) Regulations, as the name implies, govern the planning of buildings, before they are built. In this case the building was built in about 1963 and hence Mr Ng submitted that the Building (Planning) Regulations were not engaged. He also submitted that the Design Manual Barrier Free Access was only promulgated in 1997 and applies to private buildings constructed or substantially altered after that time. As the partitions were erected before 1997, Mr Ng submitted that the Design Manual Barrier Free Access was not engaged. AUTONUMOUT Despite Mr Ng's persuasive arguments, I am unable to say that no triable issue has been raised. I bear in mind the correspondence exhibited to the affirmation of Kwok Sik Yuen filed on behalf of the purchaser. The evidence shows that by letter dated 2 May 2007 from Norman Yiu, the purchaser's architect, to the Buildings Department, the Buildings Department's attention was drawn to the fact that there was no disabled access at, inter alia, shops G27, G28 and G29 due to the erection of partition walls blocking the barrier free access and asked for the Buildings Department's prompt action. AUTONUMOUT By letter dated 18 May 2007 from Norman Yiu to the Buildings Department for the attention of Cheung Ping-chuen, Norman Yiu put on record their telephone conversation by stating that With reference to the caption and our yesterday's telephone conversation (Yiu / Cheung), please be confirmed that you have carried out a Site Inspection recently on the captioned premises and reckoned that those shops have been contravened with the Building (Planning) Regulation 72 and a follow-up order will be issued against those shops under Section 24(1) of the Buildings Ordinance. AUTONUMOUT By letter dated 21 May 2007 Cheung Ping-chuen of the Buildings Department wrote to Norman Yiu as follows I refer to your letter dated 2 May 2007. Staff of this department has carried out site inspection to the ground floor of Sincere House, No. 83 Argyle Street. It was revealed that the ground floor has partitioned into small shops with some of them not provided with disabled access. As such letters will be issued to Owners/Occupants of these shops requesting remedial actions to rectify the above irregularities. If no rectification works is being done, statutory orders will be served to order remedial works to be carried out. AUTONUMOUT It is clear that the Buildings Department was taking the view that enforcement action will be taken if rectification works are not carried out. AUTONUMOUT It is important to remember that by clause 16 of the agreements the vendor had the obligation both to show and to give good title. On the evidence before me there was a real risk of enforcement action by the Buildings Department as evidenced by the correspondence that I have referred to. That being so, can it be said that there is no triable issue as to whether or not the requisitions were properly raised or whether the vendor had discharged its obligation to show and to give good title? AUTONUMOUT In *Kan Wing-yau and another v Hong Kong Housing Society* [1988] 2 HKLR 187 it was held that the obligation on a vendor to prove good title was to establish beyond reasonable doubt that the purchaser will not be at risk of a successful assertion against him of an incumbrance. It was only if the blot on the title were purely theoretical and not a practical blot that it could be ignored. AUTONUMOUT In *Spark Rich (China) Ltd v Valrose*

Ltd [2006] 2 HKC 589 at page 598 Godfrey JA (as he then was) helpfully said So the test may be usefully framed as follows : If the purchaser asks his solicitor: Can I be sure that I can safely disregard the risk? then, unless his solicitor (being a prudent and experienced solicitor) can properly advise him that he can, the purchaser cannot be obliged to accept the vendor's title, even if supplied by the vendor with opinion evidence to the effect that action by the Building Authority was unlikely. AUTONUMOUT Here, the Buildings Department has stated that enforcement action will be taken if remedial measures are not taken in respect of providing disabled access to the shops. It seems to me that there is a triable issue as to whether the requisitions were properly raised and whether the vendor has shown and proved good title. AUTONUMOUT In my judgment as triable issues have been raised, the purchaser is entitled to unconditional leave to defend the counterclaim and I so order. Security for costs AUTONUMOUT In the alternative the vendor seeks an order for security for its costs of defending the action. AUTONUMOUT The jurisdiction to order security for costs is contained in section 357 of the Companies Ordinance Cap. 32 which provides that Where a limited company is plaintiff in any action or other legal proceedings, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given. AUTONUMOUT The court has a discretion whether or not to order security for costs. On a plain reading of section 357 it is only where it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant that the court goes on to exercise its discretion as to whether or not to order security. The burden is on the vendor to satisfy the court by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant. It is not sufficient to show that there is reason to believe that the company may be unable to pay such costs. AUTONUMOUT The vendor relies on the fact that the purchaser was only incorporated on 24 September 2004. It only has an authorized share capital of \$10,000 and a paid up capital of \$100. It also relies on the fact that at its registered address the purchaser's name was not displayed in either the building directory in the main lobby of the ground floor or on the floor in the building where its registered office is situate. It also relies on the fact that the purchaser's English name is not in PCCW's English White Pages from 2004 to 2006 nor in PCCW's Chinese White Pages for the years from 2003 to 2006. The vendor also makes the point that the preliminary deposits under the agreements were paid not by the purchaser but by another company Pine Luck Development Ltd. The assertion is then made that the purchaser is a shelf company with no business of its own and no assets and the court is asked to conclude that the purchaser will be unable to pay the costs. AUTONUMOUT I am not satisfied on the evidence that there is reason to believe that the purchaser will be unable to pay the defendant's costs if successful in defending the action. AUTONUMOUT Wong Hoi Ming in his affirmation pointed out that Pine Luck Development Ltd which paid the total amount of \$300,000 under the provisional agreements was a related company of the purchaser with common directors and beneficial shareholders. He also produced a profits tax payment voucher issued by the Inland Revenue Department showing

that the purchaser paid the first instalment of profits tax in the sum of \$234,931 as well as the second instalment of profits tax in the sum of \$78,310 on 26 January 2006. Thus the total sum of \$313,241 was paid as profits tax by the purchaser for the year 2004 to 2005. The purchaser must have generated sufficient profits during that year to be liable for that amount of profits tax. It cannot seriously be suggested that the purchaser was not an active company with no business of its own. AUTONUMOUT The vendor fails to satisfy me that the purchaser will be unable to pay the vendor s costs if successful in defending the action. That being so, the question of the court s discretion does not arise. I dismiss the application for security for costs. AUTONUMOUT I also make an order nisi that the costs of the application for summary judgment be costs in the cause and that the costs of the application for security for the vendor s costs be costs to the purchaser in any event. (Arjan H. Sakhrani) Judge of the Court of First Instance, High Court Mr Kenneth C. L. Chan, instructed by M/s Tam, Pun & Yipp, for the Plaintiff Mr Lawrence Ng and Ms Frances Lok, instructed by M/s C. L. Chow & Mackston Chan, for the Defendant PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk 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 (#p# (#p# (#p# r p# r p# "@AB9D 7 ,M +w6. / Jz @m2z R3y5]C]6 = c@ %gVl^ uxB26I]C]6 %gVl +w6. R3y5 \w2m & 6" abc-Sak-HCA.dot setup Microsoft Word 9.0 zje& Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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