

HONG KONG / JUDGMENT

WU CHUK ON AND ANOTHER v. LONG CHAIN DEVELOPMENT CO LTD

COURT

Court of First Instance

DECIDED

21 May 2007

CASE / FILE NUMBER

HCMP482/2007

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bjbj HCMP 482/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 482 OF 2007

BETWEEN WU CHUK ON 1st Plaintiff WU WAI TONG 2nd Plaintiff and LONG CHAIN
DEVELOPMENT COMPANY LIMITED Defendant

Before: Hon Chung J in Court Date of Hearing: 15 May 2007 Date of Handing Down Judgment: 21
May 2007

J U D G M E N T

This is a vendor-purchaser summons commenced by the plaintiffs vendor in March 2007 pursuant to s. 12, Conveyancing and Property Ordinance (Cap. 219). The defendant is the purchaser of the suit property, a piece of land located at Ma On Kong Village, Pat Heung, Yuen Long. As is common in Hong Kong conveyancing, requisitions on title have been raised by solicitors for the purchaser. The parties disagree on whether the requisitions have all been satisfactorily answered. By the time of commencement of this application (and certainly by the time of its hearing), only one requisition of Ma On Kong. The purchaser contends that, because of the above discrepancy, it is doubtful if the person named in the said schedule as the owner was the same person as that named as the deceased in the succession document. The completion date has been postponed several times. Completion now awaits the determination of this application. Three statutory declarations have earlier been sent to the purchaser's solicitors as part of the attempt to answer the outstanding requisition. The deponents thereof stated therein they believe the persons respectively named in the said schedule and the succession

document were in fact one and the same person, namely, Wu Cheong (or Cheung) Ying. The first statutory declaration was made by one of the plaintiffs. He claims he was informed by his father that Cheong Ying was his great-grandfather and that when Cheong Ying passed away in 1934, the suit property (together with other land properties) was inherited by his grandfather, Wu Hung Wo. He also claims he has never heard of anyone named U Ying Cheong in the Wu clan of the Ma On Kong area. He said it was common knowledge within the Wu clan the registered owner of the suit property was Wu Cheong Ying. The second statutory declaration was made by a Madam Chan Yuk Tai, now aged about 78 years old. She claims to have married one Wu Yung Kun, the grandson of Wu Cheong Ying. Both before and after the marriage, she saw Wu Cheong Ying, Wu Yung Kun and her husband's father and brother farming on the suit property. She understands Wu Cheong Ying was the owner of the suit property and it was inherited by her husband and later by her sons, that is, the plaintiffs. She believes U Ying Cheong refers to Wu Cheong Ying and the former name was simply a clerical mistake on the part of the government officials. The last statutory declaration was made by a Wu Wan Yau, aged about 74 years old. He claims to be acquainted with Wu Cheong Ying, who was his grand-uncle, and the plaintiffs, who are Wu Cheong Ying's great grandchildren. He recalls Wu Cheong Ying used to reside in Ma On Kong and farmed on the suit property. For a period of about 3 years when he was still at school, he passed by the suit property daily and saw Wu Cheong Ying and his family members farming there. According to him, he was about 11 years old when Wu Cheong Ying passed away. He attended the funeral ceremony. After Wu Cheong Ying passed away, the suit property was inherited by his son, and later by his grandson. He does not know anyone surnamed Ying in the Ma On Kong area. Because the Wu Cheong Ying family has been farming the suit property since the 1930s, he considers Wu Cheong Ying to be its owner. He also considers it quite probable the discrepancy in name was caused by the clerical mistake of the government officials. The relevant legal principles are undisputed and can be summarised as follows:-

- (1) generally, a vendor is under a duty to show good title of the land property sold to a purchaser;
- (2) that duty is normally to be discharged by the vendor providing documents of title which show beyond reasonable doubt that the vendor is in possession of the estate and he is able to convey it to the purchaser without any blot or possibility of litigation: *Re Stirrup's Contract* [1961] 1 WLR 449,454;
- (3) the test for good title has been described in various ways (see below). Examples of sub-para. (3) above have been given by counsel. In *MEPC Ltd. v. Christian-Edwards and others* [1981] AC 205, 220, good title was said to have been shown:- if the facts and circumstances are so compelling to the mind of the court that the court concludes beyond reasonable doubt that the purchaser will not be at risk of a successful assertion against him of the incumbrance. In *Re Heaysman's and Tweedy's Contract* (1893) 69 LT 89, the court said:- In applying that principle, we must exercise our common sense, and see if the supposed lawsuit has any basis whatsoever. If we come to the conclusion that the supposed lawsuit exists only in the imagination of the purchaser, we ought to disregard it. The Hong Kong Court of Final

Appeal said in Mexon Holdings Ltd. v. Silver Bay International Ltd. [2000] 1 HKLRD 935, 942:- A good title does not mean a perfect title, free from every possible blemish. Whenever a question like this arises it must be approached from the stand-point of a willing purchaser and a willing vendor, both possessed of reasonably robust commonsense, both intending to see the transaction through to completion in terms of their own bargain. In relation to discrepancies in signatures and/or identity, the legal principles are also undisputed:-

- (a) evidence is admissible to identify the party involved;
- (b) potential title defects arising from such discrepancies can be remedied by proper conveyancing evidence : Lam King I v. Tsui Ming Yee [1989-91] CPR 561, 563E-F; Win Mode Industries Ltd. v. Create Gain Ltd., HCMP 2255/1992 (9 October 1992);
- (c) what amounts to proper conveyancing evidence depends on the circumstances of each case: G.B. Industries Ltd. v. Yu Chung Kwok and Luk Pik Wa Christina, HCMP 1060/1994 (7 June 1994), p. 5; Lai May Hing v. Lai Sai Fuk [1999] 2 HKC 464, 467H; Buildon Investment Co. Ltd. v. Leung Sai Yum and Another [1989] 2 HKC 499, 502; Tong Yuen King v. Roberto Siu Lui, HCMP 2949/1995 (31 October 1995). Applying the above legal principles to the facts of this application, I conclude that the conveyancing evidence adduced by the plaintiffs to be a sufficient answer to the outstanding requisition. Accordingly, I conclude that good title has been shown by the plaintiffs. I consider the first statutory declaration to be inadequate because the deponent thereof does not possess personal knowledge of the identity of the owner of the suit property. His belief is based on information of a hearsay nature. Little weight should be given to such evidence. The same cannot be said of the second or the third statutory declarations. Both deponents have personal knowledge of the facts regarding how the suit property was used since the 1930 s, when the then owner of the suit property (identified by both to be Wu Cheong Ying) was alive. They also have personal knowledge of how the suit property was inherited by Wu Yung Kun (and later by the plaintiffs) from Wu Cheong Ying when he passed away in the early 1940
- s. They have not heard of anyone in the Ma On Kong area called U Ying Cheong , let alone any connection between U Ying Cheung and the suit property. The circumstantial evidence is consistent with the second member of the Wu clan whose given name starts with Ying , this makes the existence of a person named U Ying Cheung more probable. I do not agree. The parties agree that there should be no order as to costs irrespective of the outcome of this application. No costs order will therefore be made. (Andrew Chung) Judge of the Court of First Instance High Court Ms Yvonne Chiu, instructed by Messrs King & Co., for the Plaintiffs Ms Frances Leung, instructed by Messrs Leung Kin & Co., for the Defendant
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Prepared on 26 October 2026 · Esheria