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HCA 2003 No. 2761

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 2761 OF 2003

BETWEEN

Amended in red on the
14th day of October
2005 pursuant to the
Order of Mr. Registrar
C. Chan dated the 9th
day of September 2005

FIRST STAR DEVELOPMENT LIMITED

Plaintiff

and

THE HONG KONG HOUSING AUTHORITY

1st Defendant

THE SECRETARY FOR JUSTICE
(ON BEHALF OF THE GOVERNMENT
OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION)

2nd Defendant

AMENDED DEFENCE OF THE SECOND DEFENDANT

1. Unless otherwise stated, references in this pleading to paragraph numbers are references to those in the Amended Statement of Claim herein re-filed on 25th July 2003 5th August 2005.
- 1A. This amended defence is served without prejudice to the 2nd Defendant's right to strike out all or part of the Amended Statement of Claim.
2. Paragraph 1 of the Amended Statement of Claim is admitted.
3. Paragraph 2 of the Amended Statement of Claim is not admitted.

4. Paragraph 3 of the Amended Statement of Claim is not admitted.
5. As to paragraph 4 of the Amended Statement of Claim, it is admitted that, on 25th June 1999, the Plaintiff submitted a Form of Tender ("the Tender") to the 2nd Defendant. Save and except as expressly admitted, paragraph 4 of the Amended Statement of Claim is denied.
6. Paragraph 5 of the Amended Statement of Claim is ~~not~~ admitted. ~~The 2nd Defendant will refer to the Tender at the trial of this action for its full terms and effect.~~
7. As to paragraph 6 of the Amended Statement of Claim:
 - (i) It is admitted that in or about September 1999, the Tender was accepted by the 2nd Defendant;
 - (ii) It is admitted that a Memorandum of Agreement dated 22nd October 1999 was executed between the Plaintiff of the one part and the Chief Executive on behalf of the 2nd Defendant of the other part.Save and except as expressly admitted, paragraph 6 of the Amended Statement of Claim is denied.
8. As to paragraph 7 of the Amended Statement of Claim:
 - (i) It is admitted, if the same is intended to be alleged, that after execution of the Memorandum of Agreement and pursuant thereto, the Plaintiff became the purchaser of the lot of land at Kowloon Inland Lot No. 11076, Hung Hom Bay Reclamation Area, Kowloon ("the Lot");

(ii) It is admitted that, after execution of the Memorandum of Agreement, the Plaintiff commenced development of a project at the Lot, which is now known as the Hunghom Peninsula ("the Development").

(iii) No admission is made as to the date of commencement of the Development.

Save and except as aforesaid ~~expressly admitted~~, paragraph 7 of the Amended Statement of Claim is denied.

9. Paragraph 8 of the Amended Statement of Claim is denied.
10. Save that it is denied there were any "implied terms", the 2nd Defendant makes no further admission to Paragraph 9 of the Amended Statement of Claim as the same is not a proper plea and is so lacking in particularity as to render it meaningless and liable to be struck out.
11. Paragraph 10 of the Amended Statement of Claim is denied.
12. Paragraph 11 of the Amended Statement of Claim is denied.
13. Paragraph 12 of the Amended Statement of Claim is denied. It is averred that the possibility that the 1st Defendant might refrain from nominating home-owners to purchase the residential units after completion by the Plaintiff was in the contemplation of the parties when the Memorandum of Agreement was executed. The 2nd Defendant refers to the Special Conditions of the Agreement and Conditions of Sale by Tender of Kowloon Inland Lot No. 11076 dated 22nd October 1999 ("the Special Conditions") numbers 25(a) and (b).

14. Paragraph 13 of the Amended Statement of Claim is not admitted.
15. It is admitted that on 31st March 2000, the Plaintiff applied for Pre-Sale Consent. Save and except as expressly admitted, paragraph 14 of the Amended Statement of Claim is denied.
16. As to paragraph 15 of the Amended Statement of Claim, it is admitted, if the same is intended to be alleged, that on 3rd September 2001, the Chief Secretary for Administration, on behalf of the 2nd Defendant, delivered a Statement on Housing; and that the said Statement on Housing provides that "*... I have asked the Chairman, Housing Authority to implement a moratorium on all sales of HOS flats until end June 2002*". Save and except as expressly admitted, paragraph 15 of the Amended Statement of Claim is not admitted.
17. As to paragraph 16 of the Amended Statement of Claim, it is admitted, if the same is intended to be alleged, that on 5th June 2002, the Chief Secretary for Administration, on behalf of the 2nd Defendant, delivered a "Statement on Home Ownership Scheme". Save and except as expressly admitted, paragraph 16 of the Amended Statement of Claim is not admitted.
18. As to paragraph 17 of the Amended Statement of Claim, it is admitted, if the same is intended to be alleged, that the aforesaid Statement on Home Ownership Scheme contained an annexure, being "Annex A", stating the sale program for subsidised home ownership for the period from 1st July 2002 until 30 June 2003. Save and except as expressly admitted, paragraph 17 of the Amended Statement of Claim is not admitted.
19. As to paragraph 18 of the Amended Statement of Claim:

(a) Sub-paragraph 18(a) of the Amended Statement of Claim is denied. The allegation that the 2nd Defendant did not cooperate with the Plaintiff to implement the said contracts by granting Pre-Sale Consent with reasonable dispatch but instead unreasonably delayed granting the same between the date of the application on 31st March 2000 and the grant of consent on 20th November 2000 is specifically denied.

(b),(c),(d) Sub-paragraphs 18(b)(c) and (d) of the Amended Statement of Claim are denied.

(e),(f) Sub-paragraphs 18(e) and (f) of the Amended Statement of Claim are denied without prejudice to the 2nd Defendant's contention the paragraphs are liable to be struck out.

(g) Sub-paragraph 18(g) of the Amended Statement of Claim is denied.

20. It is averred that:

- (i) The Plaintiff applied for Pre-Sale Consent on 31st March 2000;
- (ii) The Director of Lands, on behalf of the 2nd Defendant, granted Pre-Sale Consent in relation to the residential units on 20th November 2002;
- (iii) Between 31st March 2000 and 20th November 2002, the Director of Lands on behalf of the 2nd Defendant processed the Plaintiff's application for Pre-Sale Consent with due expedition and without undue delay and in the ordinary course of events.

21. Further or in the alternative, if which is denied, there was delay in the

processing of the Plaintiff's application for pre-sale consent, then such delay was not the consequence of a deliberate and intentional policy of delay, or desire on the part of the 2nd Defendant to delay the processing of the Plaintiff's application for pre-sale consent.

22. Paragraph 19 of the Amended Statement of Claim is admitted.
23. As to paragraph 20 of the Amended Statement of Claim, it is admitted that:
- (i) The Plaintiff applied for Pre-Sale Consent on 31st March 2000;
 - (ii) On 20th November 2002, the Director of Lands on behalf of the 2nd Defendant granted Pre-Sale Consent in relation to the residential units. It is averred that the Director of Lands on behalf of the 2nd Defendant granted Pre-Sale consent in relation to the non-residential elements of the development on 27th November 2002.

Save and except as expressly admitted, paragraph 20 of the Amended Statement of Claim is denied.

24. As to paragraph 21 of the Amended Statement of Claim:
- (i) It is admitted that on 21st November 2002, the Certificate of Compliance was granted;
 - (ii) It is denied that the Development comprised 2470 residential units of a total gross floor area of 144,299.926 square metres, commercial units of a gross floor area of 3, 733.124 square metres and 528 units of car parking spaces. It is averred that the Development comprised

2470 residential units of a total gross floor area of 144,299.926 square metres, non-domestic units and a kindergarten of a gross floor area of 3, 733.124 square metres and 528 units of car parking spaces.

(iii) It is admitted, if the same is intended to be alleged, that by 21st November 2002, the Development was completed.

25. As to paragraph 22 of the Amended Statement of Claim, it is admitted that the 1st Defendant issued a press release on 28th November 2002 in response to a Statement of Housing Policy which, if the same is intended to be alleged, that on 13th November 2002, the Secretary for Housing, Planning and Lands delivered on 13th November 2002 a Statement on Housing Policy. Save and except as expressly admitted, paragraph 22 of the Amended Statement of Claim is denied.

26. Paragraph 23 of the Amended Statement of Claim is not admitted.

27. Paragraph 24 of the Amended Statement of Claim is denied.

28. (i) Paragraph 25 of the Amended Statement of Claim is denied.

(ii) (a) It is averred that under Special Condition 25(a), nominations may be made at any time during a period of 20 months from the date of the Pre-Sale Consent, such that the latest date on which a nomination could be made is 19th July 2004;

(b) Thus, as at the date of issuance of the Writ herein, the permissible nomination period had not expired; and in any event, in accordance with Special Condition 25(a)(iii) upon expiry of the nomination period,

Special Condition 25(b) shall apply and the Plaintiff is precluded from making any claim or demand against the 2nd Defendant.

29. (i) Special Condition 25(a)(iii) provides that:-

"If the Hong Kong Housing Authority acting through the Director of Housing fails to make a nomination in respect of any unit in accordance with sub-clause (a)(i) of this Special Condition, or fails to make a further nomination in respect of any unit in accordance with sub-clause a(ii) of this Special Condition, sub-clause (b) of this Special Condition shall apply and in either event the Purchaser shall not make any claim or demand whatsoever, whether under these Conditions or common law, against the Government or the Hong Kong Housing Authority or the Director of Housing". (emphasis added)

- (ii) Special Condition 25(b) provides that:-

"...Any or all the units [sic] referred to shall be purchased by the Hong Kong Housing Authority or its nominee from the Purchaser at the price fixed therefore in accordance with Special Condition No. (27)(b)(iv) hereof..."

- (iii) In the premises, the Special Conditions specify that in the event that a nomination of purchasers is not made then, upon the expiry of a 20-month period from the date of Pre-Sale Consent, the 1st Defendant or its nominee is obliged to purchase all units in respect of which no nomination has been made.

30. Paragraph 26 of the Amended Statement of Claim is denied.

~~31. The Defendant does not admit that the Plaintiff has suffered the damage alleged in paragraph 27 of the Statement of Claim or any damage.~~

~~31.31.~~ As to paragraph ~~27~~ of the Amended Statement of Claim, it is admitted that the Plaintiff, by its solicitors, Messrs. Cheung, Chan & Chung, sent a letter dated 20th May 2003 to the 2nd Defendant. Save and except as expressly admitted, paragraph ~~27~~ of the Amended Statement of Claim is denied.

~~31.32.~~ As to paragraph ~~28~~ of the Amended Statement of Claim, it is admitted that the 2nd Defendant, via the Office of the Secretary for Housing, Planning & Lands, sent a letter dated 12th June 2003 to the Plaintiff. Save and except as expressly admitted, paragraph ~~28~~ of the Amended Statement of Claim is denied.

~~34. Paragraph 30 of the Statement of Claim is denied.~~

~~33. Paragraph 29 of Amended Statement of Claim is admitted, save and except that the further modification does not apply to car parking spaces in the manner as pleaded therein. Subject as aforesaid, the 2nd Defendant avers that the scope and effect of the further modification went no further than what is pleaded therein.~~

~~34. As to paragraph 30 of Amended Statement of Claim:-~~

~~(1) The 2nd Defendant repeats the denial in Paragraph 10 above as to the existence of the alleged implied terms;~~

~~(2) It is denied that the grant of Pre-Sale Consent was delayed, whether as alleged or at all;~~

- (3) The alleged breaches of the Memorandum of Agreement and/or the PSPS Practice are denied; and
- (4) Save as aforesaid no admissions are made to the paragraph.
35. Without prejudice to the foregoing denials of liability, no admissions are made to paragraphs 31 and 32 of the Amended Statement of Claim. The 2nd Defendant denies that the Plaintiff is entitled to the relief sought or any other relief.
36. Save as hereinbefore expressly admitted or stated to be not admitted, the 2nd Defendant denies each and every allegation of fact in the Amended Statement of Claim as if the same were set forth herein and traversed seriatim.

Dated the 1st day of December 2003.

Dated the 14th day of October, 2005.

Johnny Mok
Counsel for the 2nd Defendant

Gregory Payne
Senior Government Counsel for the 2nd Defendant

Clifford Smith
Senior Counsel for the 2nd Defendant


Samuel Lee
Government Counsel for the 2nd Defendant

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ONG & CO.

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RS CLK

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 2761 OF 2003

We, the undersigned
consent to the Amended
Defence of the Second
Defendant being filed out
of time.

BETWEEN

FIRST STAR DEVELOPMENT LIMITED Plaintiff

Dated the 14th day
of October 2005

and

THE HONG KONG HOUSING AUTHORITY 1st Defendant

Messrs. Cheung, Chan & Chung,
Solicitors for the Plaintiff

THE SECRETARY FOR JUSTICE 2nd Defendant
(ON BEHALF OF THE GOVERNMENT
OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION)

AMENDED DEFENCE OF THE SECOND DEFENDANT

~~Filed this 1st day of December 2003~~
at _____ a.m./p.m.
Filed this 14th day of October, 2005

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