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Singapore High Court
Clarifies the Nature of
Stakeholding Monies
in Conveyancing
Transactions
Pursuant to the
Housing Developers
Rules

*Lau Soon and another v UOL
Development (Dakota) Pte Ltd
and another appeal [2021]
SGHC 195*

24 August 2021

LEGAL
UPDATE

In this Update

The recent High Court decision of *Lau Soon and another v UOL Development (Dakota) Pte Ltd and another appeal* [2021] SGHC 195 represents the first time a Singapore Court considers the nature of stakeholding monies in a conveyancing transaction using the sale and purchase agreement prescribed by the Housing Developers Rules.

This article discusses this noteworthy decision.

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INTRODUCTION

This decision is the first time a Singapore court has considered the nature of stakeholding monies held by the Singapore Academy of Law (“**SAL**”) in relation to a sale and purchase agreement that engages the Housing Developers Rules.

In *Lau Soon and another v UOL Development (Dakota) Pte Ltd and another appeal* [2021] SGHC 195, the Singapore High Court held that when r 7 of the Singapore Academy of Law (Stakeholding) Rules (1998 Ed) (“**Stakeholding Rules**”) is engaged, the SAL may hold stakeholding monies beyond the stakeholding period without a time limit. These monies will only be released when the parties notify the SAL that they have reached an agreement, or where a court order on final apportionment or division of the disputed amount has been received by the SAL.

R 7 of the Stakeholding Rules is engaged when the purchase has filed a notice of deduction and when the vendor has filed a notice of dispute.

BACKGROUND

Pursuant to a sale and purchase agreement (“**SPA**”), the Appellants purchased a condominium unit from the Respondent (a property developer) and paid 5% of the purchase price to SAL to hold as stakeholder (“**Stakeholding Sum**”).

Later, the Respondent sought an order that the Appellants authorise the SAL to release the Stakeholding Sum to them. The Appellants resisted the application on the following grounds:

- (a) The Respondent had failed to meet its obligations under the SPA to rectify defects in the form of structurally unsafe windows in the Unit.
- (b) The Respondent’s claim was time-barred.

The District Judge ordered the SAL to release the Stakeholding Sum to the Respondent for the following reasons:

- (a) On a purposive interpretation of s 6(1)(a) of the Limitation Act, the Respondent’s claim was not one that is “founded on a contract” within the meaning of that provision, and was accordingly not time-barred.
- (b) The Respondent’s claim was founded on an assertion of a proprietary interest.

- (c) If the Respondent's claim was held to be time-barred, this would result in the absurd consequence of the Stakeholding Sum being held by the SAL in perpetuity.
- (d) In the alternative, the Respondent's claim is in the nature of an action by a beneficiary to recover trust property, being the Stakeholding Sum, in the possession of the trustee (*ie* the SAL). Provision for this cause of action is covered in s 22(1)(b) of the Limitation Act- therefore no period of limitation applied.

The Appellants appealed against the District Judge's decision.

HIGH COURT'S DECISION

The High Court dismissed the Appellants' appeal and ordered the SAL to release the Stakeholding Sum to the Respondent.

While the Respondent's cause of action was one that was "founded on a contract" within the meaning of s6(1)(a) of the Limitation Act, it did not necessarily mean that the Respondent's cause of action was time-barred.

KEYPOINT

Where there is the superimposition of the Stakeholding Rules onto a two-contract analysis of stakeholding arrangements (as was in the present case where the Appellants filed a Notice of Deduction and where the Respondent filed a Notice of Dispute in response, under r 7 of the Stakeholding Rules), the Respondent's cause of action will never be time-barred.

Generally, where a stakeholder is involved, there are two separate contracts to be considered. The first is the contract between the vendor and the purchaser which determines when and to whom the stakeholding monies will be paid (*ie* the bilateral contract). The second is the contract relating to the stakeholding monies between the vendor, the purchaser, and the stakeholder (*ie* the tripartite contract). Generally, the scope and purpose of the tripartite contract is very limited. This contract provides that the stakeholder shall keep the stakeholding monies pending a triggering event and shall make payment in response to that event. The processes and safeguards attending these triggering events thus serve to protect the purchasers and vendors' interest in the stakeholding monies.

In the present case, the SPA was the bilateral contract between the Appellants and the Respondent. Clause 5.4 of the SPA provided that the SAL was to hold sums as stakeholder. Accordingly, there was a tripartite

contract between the Appellants, the Respondent, and the SAL for the SAL to retain the Stakeholding Sum pending a triggering event.

The Stakeholding Rules must be considered when there is a dispute arising from a tripartite contract. Where a party seeks recourse by reference to the tripartite contract, they will need to consider if an applicable rule in the Stakeholding Rules can be read as a term governing the tripartite relationship.

In the present case, the parties' dispute pertained specifically to whether there was a basis – after more than six years – for the Respondent to seek an order compelling the SAL to release the Stakeholding Sum. The mechanisms for managing and resolving such disputes are specifically and exactly provided for by r 7 of the Stakeholding Rules. To resolve the dispute, r 7 can be interpreted and applied as a term governing the three parties' contractual relationship.

R 7 provides that the following occurs in a situation where the purchaser has filed a Notice of Deduction and the vendor has filed a Notice of Dispute in response:

- (a) The SAL will continue to hold the stakeholding monies “beyond the stakeholding period”. There is no provision of a time limit to this period anywhere in the Stakeholding Rules; this suggests that the SAL will hold these monies indefinitely.
- (b) The SAL will release the stakeholding monies to the parties only where:
 - (i) the parties notify SAL that they have reached an agreement; or
 - (ii) a court order is received by the SAL.

Pending the occurrence of one of the two (triggering) events, the SAL is to retain the stakeholding monies.

The intention of this is that, in the event that the purchaser and the vendor cannot come to an agreement in relation to stakeholding monies, the SAL will not be involved in this dispute, and it is for any party desiring its release to obtain a court order.

The Respondent's claim does not rest on a breach by the Appellants of any of the terms of the SPA. Rather, the cause of action that the Respondent relied on in this originating summons is the tripartite contract, more specifically, the dispute resolution mechanism provided by r 7(3) of the Stakeholding Rules.

R 7 of the Stakeholding Rules does not contemplate a limit to the period of extension of the stakeholding period and provides for payment out only upon the occurrence of the two triggering events. The parties had therefore agreed to contract out of the Limitation Act, and s 6(1)(a) of the Limitation Act did not apply in relation to the Respondent's cause of action.

Therefore, even though the present claim by the Respondent against the SAL is founded on a contract (*ie* the tripartite contract), there is no limitation period applicable to the Respondent's claim to the stakeholding monies held by the SAL.

Conversely, the Appellant's right to sue the Respondent for defects under the bilateral contract was time-barred. This being the case, the High Court ordered the release of the Stakeholding Sum to the Respondent.

COMMENTARY

This decision is very much welcome as it clarifies that where the Stakeholding Rules apply, parties are taken to agree to place themselves within the operation of R 7 of the Stakeholding Rules. Therefore, parties had agreed to contract out of the Limitation Act. S 6(1)(a) of the Limitation Act does not apply to the Respondent's cause of action.

In such a situation, there is no limitation period applicable to a developer's claim to the stakeholding monies held by the SAL.

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