

## CONTRACT FOR THE GRANT OF A COMPLIANT OPTION TO PURCHASE

*Woo Kah Wai v Chew Ai Hua Sandra*<sup>1</sup>

ALVIN W-L SEE\*

### I. INTRODUCTION

An agreement for the sale and purchase of real property often begins with an option to purchase (“OTP”).<sup>2</sup> Usually, upon agreeing on the purchase price, the vendor will grant the purchaser an OTP in return for an option fee. During the specified option period, the vendor is bound to keep the property for the purchaser. This affords the purchaser an opportunity to reconsider his or her decision to purchase the property and time to source for financing for the purchase. If the purchaser decides to proceed with the purchase, he or she will exercise the OTP by the prescribed method and within the option period, upon which the vendor is obliged to complete the transaction. In *Woo Kah Wai CA*, the issue before the Court of Appeal was whether the vendors were contractually obliged to grant an OTP containing terms demanded by the purchaser in the first place. To determine whether a contract to this effect has arisen, it is necessary to examine the method by which the OTP was sought to be procured. This case provides the opportunity to consider how basic principles of contract formation apply in the process of procuring an OTP, and also how subtle legal distinctions between the different methods of procuring an OTP have bearing on practical matters.

### II. FACTS AND CLAIM

Mr Woo and Mdm Lum (“the vendors”), who were the co-owners of a condominium unit (“the property”), advertised to sell their property in January 2010. Mdm Chew (“the purchaser”), who was informed about the advertisement by her agent, expressed

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\* Assistant Professor, School of Law, Singapore Management University. I wish to thank Goh Yi-han and Yip Man for their helpful comments. All errors are my own.

<sup>1</sup> [2014] 4 SLR 166 (CA) [*Woo Kah Wai CA*]. For the High Court’s judgment, see *Chew Ai Hua Sandra v Woo Kah Wai (Chesney Real Estate Pte Ltd, third party)* [2013] 3 SLR 1088 (HC) [*Woo Kah Wai HC*].

<sup>2</sup> On OTPs generally, see Tan Sook Yee, Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee’s Principles of Singapore Land Law*, 3rd ed (Singapore: LexisNexis, 2009) at 381-387.

interest in purchasing the property. She instructed her agent to send to the vendors a document titled 'Offer to Purchase' ("the offer"), by which she offered to purchase the property for \$920,000. The offer was dated 10 February 2010 but was delivered to the vendors' agent only on 11 February 2010. The important terms of the offer were: (a) the sale is subject to the signing of an OTP; (b) the option period shall be three days; (c) the completion period shall be 12 weeks; (d) the vendors shall accept or reject the offer within three days (*ie* by 4pm of 13 February 2010); (e) if the offer is rejected, the vendors shall return the option money; and (f) if the offer is accepted, the vendor shall deliver a duly signed OTP to the purchaser. The purchaser enclosed with the offer a cheque for \$9,200 as the option money.

After receiving the offer, the vendors' agent drafted an OTP for the vendors. The OTP was dated 11 February 2010 and the option period was stated to end after 4pm, 13 February 2010. On the evening of 11 February 2010, one of the vendors, Mr Woo, came to their agent's office to sign the offer as well as the OTP.<sup>3</sup> He also collected the enclosed cheque and deposited it into his bank account. The OTP was then made available for the collection of the purchaser's agent on 12 February 2010. The purchaser's agent came to collect the OTP in the late evening of that day. When he saw the OTP, he noticed that the option period would expire on the next day, which was also a Saturday and a public holiday. Negotiations ensued between the parties in an attempt to rectify the 'error', during which the OTP remained with the vendors' agent. Both parties gave conflicting accounts as to who was responsible for the error and whether the vendors agreed to extend the deadline to 19 February 2010. The only certain fact is that the unamended OTP was handed over to the purchaser only after 6pm of 13 February 2010, after the option period had ended. On 17 February 2010, the purchaser sought to exercise the option but the office of the vendors' solicitor was closed for a public holiday. Another attempt was made on the following day, on 18 February 2010, but it was rejected by the vendors' solicitor on the ground that the option period had expired. Later, in July 2010, the vendors sold the property to an innocent third party at a higher price.

The purchaser's main claim was that the vendors were in breach of a contract for the grant of an OTP ("the Pre-Option Contract"). There were two alternative arguments for this claim. First, it was an implied term of the Pre-Option Contract that the OTP should remain open for acceptance for three working days instead of three calendar days. Due to the intervening public holidays, the option period should have expired only on 19 February 2010. The vendors were therefore in breach of contract for refusing to accept the purchaser's attempt to exercise the option on 18 February 2010. Secondly, the vendors were in breach of the Pre-Option Contract by failing to grant an OTP containing terms stipulated by the purchaser's offer ("a compliant OTP"). The purchaser sought the remedy of specific performance or, alternatively, an award of damages. Besides the breach of contract claim, the purchaser also claimed that the vendors' agent had represented to the purchaser's agent that the OTP would remain open for three working days after it was delivered, *ie* until 19 February 2010. As insufficient evidence was adduced to prove that such a representation was ever made, this claim was dismissed and nothing in the judgments turned on the

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<sup>3</sup> Mr Woo was acting with the consent of the other co-owner, Mdm Lum, and hence as her agent: *Woo Kah Wai HC*, *supra* note 1 at para 19.

substantive law of misrepresentation. The following discussion will therefore focus only on the breach of contract claim.

### III. THE DECISIONS

The purchaser succeeded in the High Court, the judgment of which was delivered by Lionel Yee JC. The Court of Appeal (Chao Hick Tin JA delivering the judgment) was in full agreement with the High Court as to the grounds for holding in the purchaser's favour. For certain issues, the Court of Appeal also took the opportunity to provide additional clarifications.

#### A. *Interpreting the Offer*

It is convenient to begin with the interpretation of the terms of the purchaser's offer, which underlay the purchaser's first argument. The duration of three days stipulated in the offer was held to mean three calendar days instead of three working days. This was consistent with the manner in which the purchaser computed the three days duration for the vendors to accept the offer. The fact that the option period would expire on a public holiday was irrelevant.<sup>4</sup> Importantly, it was also held that the option period would only begin to run when the OTP was made available for the collection of the purchaser's agent, which was on 12 February 2010.<sup>5</sup> Thus, a compliant OTP would have had an option period that ended no earlier than 15 February 2010. The purchaser's first argument was accordingly rejected.

#### B. *The Pre-Option Contract*

The success of the purchaser's second argument depended on whether the vendor was contractually obliged to grant a compliant OTP in the first place, that is, one that expired no earlier than 15 February 2010. To answer this, it is necessary to first appreciate one important point. If one accepts that an OTP is a creature of contract law, then any legal relationship or interest purported to be created by an OTP cannot arise until the finding of an agreement between the parties coupled with an intention to create a legal relationship. Whether such an agreement has arisen, and if so at what point, are necessarily fact-specific questions. The following discussion will consider the extent to which the facts of *Woo Kah Wai CA* differ from other common situations in which an OTP is procured and why the distinctions are legally and practically significant.

##### 1. *Two Common Situations*

It is helpful to begin by considering two common situations in which an OTP is procured and understand how they differ in legal explanation.

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<sup>4</sup> *Woo Kah Wai CA*, *supra* note 1 at para 81.

<sup>5</sup> *Ibid* at para 83.

(a) *The first situation*: An interested purchaser may state his or her intention to purchase a property and request that the vendor grants an OTP. In the absence of prior negotiation between the parties, this request amounts to nothing more than an invitation to treat, which is an attempt to invite or induce an offer from the vendor. The vendor is free to ignore this request. Or he may grant an OTP, which amounts to an offer. Up to this point no contractual relationship arises. This explains why the vendor is free to stipulate the terms of the OTP. He or she may even include terms which do not meet the purchaser's expectation.<sup>6</sup> If the purchaser is satisfied with the terms of the OTP, he or she may accept it, usually by paying the option fee, or by other means, *eg* by signing the OTP. It is only at this point that a contractual relationship between the parties arises such that the vendor is obliged to transfer the property to the purchaser upon the latter's exercise of the OTP. The acceptance gives rise to a conditional contract of sale, the nature of which shall be explained below.

(b) *The second situation*: Another common situation is where negotiation between the parties has led to an agreement for the sale and purchase of the property, a term of which is to proceed by way of an OTP. Unlike the first situation, here the contract of sale arose prior to the grant of an OTP. The grant of an OTP is not an offer but is pursuant to a term of the existing contract of sale. A good example is *Alrich Development Pte Ltd v Rafiq Jumabhoy*.<sup>7</sup> The parties came to an agreement for the sale and purchase of a property. Pursuant to this contract, the vendor granted an OTP to the purchaser, but subsequently sought to revoke it. The Court of Appeal held that this was in breach of the contract of sale. In explaining the nature of this contract, the court drew an analogy to a "unilateral contract along the lines of *Carlill v Carbolic Smoke Ball Company*".<sup>8</sup> In that case, the contract was formed between the company and a smoke ball user when the latter had performed the terms of the offer, *ie* by using the smoke ball three times per day for three weeks.<sup>9</sup> However, the company's obligation to pay the promised £100 only arose upon the smoke ball user contracting influenza. Similarly, in *Alrich*, the contract of sale contemplated that the vendor's obligation to convey the property and the purchaser's obligation to pay the purchase price did not arise until the purchaser's exercise of the OTP. In both cases the main obligations of one or both parties arise only when a specified condition is fulfilled. This is known as a conditional contract. The reference to the term "unilateral contract" in *Alrich* is arguably unhelpful since the contract of sale in *Alrich* was clearly a bilateral one.

## 2. Contract for the Grant of a Compliant OTP

The case of *Woo Kah Wai CA* falls somewhere in between the two situations explained above. Unlike in the first situation where the purchaser merely invited an offer, here the purchaser was the one who took the first legally significant step in procuring an OTP containing the desired terms. She had made an offer, clearly intending to be bound by its terms upon acceptance by the vendors.

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<sup>6</sup> *Ibid* at para 68.

<sup>7</sup> [1995] 2 SLR(R) 340 (CA) [*Alrich*].

<sup>8</sup> *Ibid* at para 41.

<sup>9</sup> *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256 (CA).

The case is also different from the second situation in that the offer, once accepted, did not immediately give rise to a contract of sale. Although the document sent by the purchaser referred to “an offer to purchase [the property]”, this was interpreted by the Court of Appeal to mean “an offer to purchase an OTP—specifically, a *compliant* OTP—on certain terms”.<sup>10</sup> The reason for this distinction and its practical effects will be discussed in the next section. Suffice to say that nothing in the present case turned on this.

The courts, having found that there was a valid offer on the purchaser’s part, turned their attention to the issue of acceptance. The written offer in question contained a form requiring the vendors’ signatures in the appropriate column. There were two columns. The first column was to be signed in confirmation of the vendors’ receipt of the option money. The second column was to be signed if the vendors rejected the offer. Mr Woo signed in the first column and left the second column blank. He also banked the cheque into his account on the same day. The Court of Appeal found, based on the totality of evidence, that the offer had been accepted. But the attention was clearly on Mr Woo’s signature.<sup>11</sup> The High Court, on the other hand, paid more attention to Mr Woo’s act of banking in the cheque received and in retaining the money beyond the option deadline.<sup>12</sup> The difference is that on the former approach the contractual relationship would have arisen earlier, even before Mr Woo had banked in the cheque. But this was not an issue in dispute. A Pre-Option Contract clearly arose on the facts and the vendors were contractually obliged to grant a compliant OTP. Since the OTP that was granted expired on 13 February 2010, which was earlier than the contractually agreed date of 15 February 2010, the vendors were in breach of the said contract.

### 3. *Further Distinctions and Practical Consequences*

Although the finding of a concluded Pre-Option Contract was sufficient to determine the dispute, it is nonetheless useful to also consider a few other aspects of the decision that are of practical interest.

As explained earlier, the vendors’ obligation to grant a compliant OTP was not pursuant to a contract of sale of property (as in the second situation). Instead, it was pursuant to what the Court of Appeal called a “Pre-Option Contract”, which was described as “a contract for the grant of an OTP”. This description was borrowed from the case of *Joseph Mathew v Singh Chiranjeev*.<sup>13</sup> There, the purchasers offered to buy the property for a specified sum and to proceed by way of an OTP, which the vendors accepted. An OTP was sent to the vendors, who refused to sign it. The Court of Appeal held that the vendors were in breach of “a valid contract for the grant of an option for the sale of the Property”.<sup>14</sup> However, the court also said that the vendors’ acceptance of the purchaser’s offer to buy the property at a specified price, which gave rise to the contract in question, “represented the end-point (and

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<sup>10</sup> *Woo Kah Wai CA*, *supra* note 1 at para 47 [emphasis in original].

<sup>11</sup> *Ibid* at paras 53-61.

<sup>12</sup> *Woo Kah Wai HC*, *supra* note 1 at paras 21-23.

<sup>13</sup> [2010] 1 SLR 338 (CA) [*Joseph Mathew CA*], noted in Kelvin F K Low, “Informal Dealings with Land: Retaining the Knotty Apron Strings” (2010) 22 Sing Ac LJ 704.

<sup>14</sup> *Joseph Mathew CA*, *ibid* at para 20.

not the initial stage or trigger-point) of the contractual process”.<sup>15</sup> Thus, while the description of the contract gave the impression that it was a contract for the specific purpose of purchasing an OTP, on a closer examination of the facts the court may actually have been referring to a contract of sale which contained a term requiring the vendor to grant an OTP.

*Joseph Mathew CA* was followed in *Ong Kok Ming (alias Ong Henardi) v Happy Valley Holdings Pte Ltd*, where the parties’ face-to-face negotiation had led to an agreement for the sale and purchase of a property and it was understood that the vendors were to issue an OTP complying with the terms agreed during the negotiation.<sup>16</sup> The vendors, however, issued an OTP that would expire sooner than the agreed deadline. The High Court held that they were in breach of a contract “for [the] option to be issued”<sup>17</sup> by the vendors. The court even went as far as to say that “the contract that was breached. . . was the option contract rather than the contract for sale”.<sup>18</sup> However, as in *Joseph Mathew CA*, the parties had clearly arrived at an agreement for the sale and purchase of the property. In both cases it would be odd not to call the resultant contract a contract of sale. Arguably, they fall within the second situation alongside the case of *Alrich*.

The facts of *Woo Kah Wai CA* are arguably different. In the purchaser’s “offer to purchase”, it was stated that “[t]he sale of [the Property] is subject to signing the Option to Purchase”.<sup>19</sup> This contemplates that the OTP, if granted, has no legal effect until the purchaser also signs it. In this respect *Woo Kah Wai CA* is similar to the first situation. Prior to the purchaser’s acceptance of the OTP, no other contractual relationship could arise. The practical consequences of this will be explained below.

Assuming that in *Woo Kah Wai CA* a valid OTP was granted, at what point did a contract of sale arise? According to the Court of Appeal, “[a] contract for the sale and purchase of property only comes into being upon the exercise by the purchaser of a valid OTP.”<sup>20</sup> This *obiter* statement, however, appears to be based on the less favoured view that the OTP is no more than an offer to sell which is to remain open for a specified duration.<sup>21</sup> On this view, the Pre-Option Contract serves the purpose of keeping the OTP open for the specified option period. On the other hand, there is a consistent line of authorities in support of the view that a valid OTP amounts or gives rise to a conditional contract of sale.<sup>22</sup>

It is interesting to compare the two views in terms of the OTP’s irrevocability. In *Alrich*, the Court of Appeal held that the vendor’s attempt to revoke the OTP amounted to a repudiatory breach of the existing contract of sale.<sup>23</sup> The purchaser was free to ignore the repudiation and insist on exercising the OTP to bring about

<sup>15</sup> *Ibid* [emphasis omitted].

<sup>16</sup> [2011] SGHC 199 [*Ong Kok Ming*].

<sup>17</sup> *Ibid* at para 25.

<sup>18</sup> *Ibid* at para 59.

<sup>19</sup> *Woo Kah Wai CA*, *supra* note 1 at para 6.

<sup>20</sup> *Ibid* at para 51.

<sup>21</sup> *Dickinson v Dodds* (1876) 2 Ch 463 (CA).

<sup>22</sup> See *Spiro v Glencrown Properties Ltd* [1991] Ch 537 at 541 (HC); *Griffith v Pelton* [1958] Ch 205 at 225 (CA); *Weeding v Weeding* (1861) 70 ER 812 at 815; *Laybutt v Amoco Australia Pty Ltd* (1974) 132 CLR 57 (HCA). The first two cases were cited with approval in *Alrich*, *supra* note 7 at paras 41-46 (although *Alrich* concerned a conditional contract of sale that arose prior to the grant of the OTP).

<sup>23</sup> *Alrich*, *ibid* at para 46.

the parties' main obligations to complete the contract.<sup>24</sup> The answer is less sure where the OTP amounts to an offer coupled with a contract to keep it open. Would a revocation of the OTP be effectual notwithstanding that it is in breach of the said contract? In his excellent article, McGovney sought to justify several American decisions that answered in the negative.<sup>25</sup> He explained that an offeror's attempts to revoke his offer "can be nothing more than a repudiation of the contracted duty to keep the offer open" and the offeree may "ignore the repudiation and accept the offer".<sup>26</sup> This is essentially the same reasoning applied by the court in *Alrich*.

While both views are plausible and are capable of capturing the irrevocable nature of an OTP, the better view, it is submitted, is that a conditional contract of sale would arise upon the purchaser's acceptance of the OTP.<sup>27</sup> On the facts of *Woo Kah Wai CA*, the purchaser's offer contemplated a contract of sale arising upon the OTP being signed. More importantly, there are practical consequences for adopting this view over the other. The existence of a conditional contract explains why a valid OTP must comply with the formalities requirements of s 6(d) of the *Civil Law Act*.<sup>28</sup> Another issue that comes to mind is stamp duty, which is chargeable on a contract to sell an immovable property.<sup>29</sup> If the suggested analysis is correct, then stamp duty is payable when the purchaser signs the OTP, for a conditional contract of sale arises at that point. The issue of stamp duty also requires one to distinguish, on the one hand, a case where the OTP is granted pursuant to an existing contract of sale, and, on the other hand, a case where the OTP requires the purchaser's acceptance before a contract of sale arises. In the former situation, as in *Alrich*, stamp duty is payable regardless of the OTP since there is an existing contract for the sale.

#### 4. Consideration

The judgment also touched on another issue concerning contract formation. The vendors in *Woo Kah Wai CA* asserted that the Pre-Option Contract lacked consideration. It was argued that the cheque of \$9,200 was consideration only for the grant of an OTP and not for the Pre-Option Contract. The Court of Appeal disagreed, holding that the cheque was consideration for both.<sup>30</sup> Although the court did not say it so plainly, the simple explanation is that the grant of a compliant OTP would merely be in performance of the Pre-Option Contract. There was only one contract, for which the purchaser's consideration was the option money.

It is also interesting to note that where an OTP is granted pursuant to a concluded contract of sale (the second situation), as a matter of principle an option fee does not appear to be strictly necessary. The contract could be supported by the parties' mutual promise to perform the contract, which amounts to good executory consideration. In practice, however, the vendor is unlikely to agree to a conditional contract

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<sup>24</sup> *Ibid.*

<sup>25</sup> D O McGovney, "Irrevocable Offers" (1914) 27 Harv L Rev 644.

<sup>26</sup> *Ibid* at 654. Alternatively, the court may order specific performance of the collateral contract to keep the offer open (*ibid* at 647).

<sup>27</sup> Acceptance of the OTP is to be distinguished from the act of exercising the OTP.

<sup>28</sup> Cap 43, 1999 Rev Ed Sing. For formalities, see section III.B.5 below.

<sup>29</sup> *Stamp Duties Act* (Cap 312, 2006 Rev Ed Sing), First Schedule.

<sup>30</sup> *Woo Kah Wai CA*, *supra* note 1 at para 96.

of this nature, which is clearly to his or her disadvantage, unless the option fee forms part of the purchaser's consideration.

### 5. Formalities

Section 6(d) of the *Civil Law Act* provides that "any contract for the sale or other disposition of immovable property, or any interest in such property" is only enforceable if it is in writing and signed by the parties. Where an OTP is granted pursuant to a prior contract of sale, and is hence part of it, s 6(d) clearly applies. In *Woo Kah Wai CA*, the Court of Appeal held that the Pre-Option Contract must equally satisfy the requirements of s 6(d).<sup>31</sup> However, it shall be recalled that the court drew a clear distinction between the Pre-Option Contract and a contract of sale. The contract of sale does not arise until the purchaser signs the OTP or, as the court said, until the exercise of the OTP. It follows that the Pre-Option Contract is not a contract for the sale of immovable property for the purposes of s 6(d). Any reference to *Joseph Mathew CA* and *Ong Kok Ming* is also arguably unhelpful since, as has been argued, those cases most likely concerned an existing contract of sale. One plausible explanation that remains is that since a valid OTP confers on the purchaser an interest in the property, sufficient at least to lodge a caveat in the land register,<sup>32</sup> the Pre-Option Contract amounts to a contract for the disposition of an interest in immovable property covered by s 6(d).

### 6. Remedies

A purchaser who fails to receive a grant of an OTP which he or she is contractually entitled to may sue for specific performance and/or damages. If the purchaser is financially capable of purchasing the property, specific performance is invariably the preferred remedy in light of ever-increasing property prices. Where the purchaser wants the property for residential use, the courts are usually willing to order specific performance, subject of course to the usual bars.<sup>33</sup> In *Singh Chiranjeev v Joseph Mathew*, the High Court ordered the vendors to grant a compliant OTP to the purchasers, and if they refused, the Registrar was empowered to grant and sign the OTP on their behalf.<sup>34</sup> In *Woo Kah Wai HC*, however, the High Court decided not to order specific performance for two reasons. First, the property had been sold to an

<sup>31</sup> *Ibid* at para 139.

<sup>32</sup> *Mounford v Scott* [1975] Ch 258 at 265 (CA); *Ong Chay Tong & Sons (Pte) Ltd v Ong Hoo Eng* [2009] 1 SLR(R) 305 at para 75 (CA); *Eng Bee Properties Pte Ltd v Lee Foong Fatt* [1993] 2 SLR(R) 778 at para 26 (HC); *Ho Seek Yueng Novel v J & V Development Pte Ltd* [2006] 2 SLR(R) 742 at para 52 (HC); *Joseph Mathew CA*, *supra* note 13 at paras 22, 23; *Ong Kok Ming*, *supra* note 16 at para 41. In *Pritchard v Briggs* [1980] Ch 338 at 418 (CA), Templeman LJ explained the interest as such: "[T]he grant of the option creates a contingent equitable interest which, if registered as an estate contract, is binding on successors in title of the grantor and takes priority from the date of its registration."

<sup>33</sup> Where the purchase of a property is for investment purposes, a monetary remedy is generally adequate to compensate for the purchaser's loss. See *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd* [2012] 1 SLR 32 (CA).

<sup>34</sup> [2009] 2 SLR(R) 73 at para 42 (HC) [*Joseph Mathew HC*].



innocent third party.<sup>35</sup> Secondly, even if it were not so, the purchaser had unduly delayed (for 16 months) in bringing the present action.<sup>36</sup>

Having been denied the remedy of specific performance, the purchaser was confined to claiming damages. As the purpose of damages is generally to compensate a plaintiff for his or her expectation loss,<sup>37</sup> it is necessary to first determine what the purchaser in the present case would have achieved had a compliant OTP been granted.<sup>38</sup> The High Court found that the purchaser could and would have exercised the OTP and completed the contract of sale.<sup>39</sup> On the quantum of damages, the court held that it should be based on the difference between the contract price and the value of the property at the putative date of completion.<sup>40</sup> Given that the completion period stipulated in the offer was 12 weeks, and on the assumption that the OTP would have been exercised just before its expiry on 15 February 2010, the completion date would have been on or around 10 May 2010. The court ordered the precise amount of damages to be separately assessed after the judgment, presumably by a registrar.

In addition, the High Court also ordered the repayment of the option money, but without making clear the basis of this award. Counsel for the vendors assumed that the refund was on the basis of a total failure of consideration (which belongs to the law of unjust enrichment) and argued it should not have been awarded concurrently with damages for expectation loss.<sup>41</sup> Indeed, attempts to bring concurrent claims in contract and in unjust enrichment are generally denied for the fear of double recovery.<sup>42</sup> However, the Court of Appeal preferred to approach the issue as one concerning compensation: "It was to place the Purchaser in the position which she would have been in if the Pre-Option Contract had been performed and had eventually led to the sale of the Property to her."<sup>43</sup> The court recognised that the purchaser would be undercompensated had the option money been excluded from the assessment of damages.<sup>44</sup> This is plainly correct, and is in fact capable of simple legal explanation. Since the option money was paid in reliance on the vendors' promise to grant a compliant OTP, one may characterise the award as compensation for reliance loss. It is often assumed that a plaintiff cannot claim both expectation loss and reliance loss for the reason that this would result in double compensation. In *Hong Fok Realty Pte Ltd v Bima Investment Pte Ltd*, the Court of Appeal agreed with the submission that "a plaintiff cannot claim wasted expenditure and loss of profit at the same time" since "a claim for profit is made on the hypothesis that the expenditure had been incurred".<sup>45</sup> However, it is important to appreciate that not all costs or expenditures

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<sup>35</sup> *Woo Kah Wai HC*, *supra* note 1 at para 56.

<sup>36</sup> *Ibid* at para 57, following *Tay Joo Sing v Ku Yu Sang* [1994] 1 SLR(R) 765 (CA) (there the delay was for 25 months).

<sup>37</sup> *Robinson v Harman* (1848) 154 ER 363.

<sup>38</sup> *Woo Kah Wai HC*, *supra* note 1 at para 58.

<sup>39</sup> *Ibid*. See also *Ong Kok Ming*, *supra* note 16 at para 61.

<sup>40</sup> *Woo Kah Wai HC*, *ibid* at para 58, following *Lie Kie Siang v Han Ngum Juan Marcus* [1991] 2 SLR(R) 511 at para 36 (HC). See also *Ong Kok Ming*, *supra* note 16 at para 62.

<sup>41</sup> *Woo Kah Wai CA*, *supra* note 1 at para 122.

<sup>42</sup> See Andrew Phang Boon Leong, gen ed, *The Law of Contract in Singapore* (Singapore: Academy Publishing, 2012) at 1790-1811.

<sup>43</sup> *Woo Kah Wai CA*, *supra* note 1 at para 123.

<sup>44</sup> *Ibid* at paras 124-126.

<sup>45</sup> [1992] 2 SLR(R) 834 at para 59 (CA).

necessary to be incurred in order to generate a profit are 'wasted'. When a purchaser exercises an OTP, the option fee becomes a part-payment of the purchase price. To ignore this part-payment in the assessment of damages would undercompensate the purchaser. The Court of Appeal also confirmed that there is nothing wrong in ordering the immediate return of the option money before damages for expectation loss are assessed. The registrar, having knowledge of the refund, would obviously exclude this amount from his or her assessment of the purchaser's expectation loss.<sup>46</sup> Such a practical approach is plainly sensible.

Lastly, the purchaser also claimed, *inter alia*, damages for rents paid for her stay at another property after the putative completion date. Her basic argument was that had the transaction been completed she would have stayed at the property and would not have had to pay rent. The High Court, in rejecting the claim, explained that it failed to take into account costs associated with accommodation that the purchaser would have had to incur had the transaction been completed.<sup>47</sup> For example, if the purchase price was to be financed mainly by a loan, the purchaser would have had to pay interest. The purchaser must prove that the rental incurred is over and above such cost. A good example where such a claim succeeded is in *Joseph Mathew HC*, where the purchasers tendered evidence to show the difference between the rents paid and the monthly expenses associated with the purchase of the property that they would have had to incur within the same period.<sup>48</sup>

#### IV. CONCLUSION

The variety of methods of procuring an OTP reflects the fact that there is no fixed way of conducting business. Although these methods seek to produce the same result, and they often do, it remains important to appreciate the legal distinctions between them. In certain cases, these legal distinctions translate into practical consequences, such as the need to comply with formalities requirements and pay stamp duty. The method of procuring an OTP also determines the exact time at which a contractual relationship arises, after which no party may legally abandon the transaction. The cited cases sufficiently illustrate these consequences.

On a more practical note, the decision of *Woo Kah Wai CA* serves as a caution to a vendor who receives an offer to purchase a compliant OTP. The vendor should first examine the terms of the offer and decide whether he or she is prepared to grant a compliant OTP. If the vendor is not prepared to do so, he or she must avoid acting in a way amounting to acceptance of the offer, such as signing in the acceptance column of the offer or banking in the option money. The vendor must not assume that the freedom to stipulate the terms of an OTP always remains with him or her. Once a contractual relationship arises, be it a contract of sale or a contract for the grant of a compliant OTP, the vendor is bound by its terms and may no longer pull out of the transaction.

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<sup>46</sup> Cf *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR(R) 537, at para 89 (CA).

<sup>47</sup> *Woo Kah Wai HC*, *supra* note 1 at paras 58, 72.

<sup>48</sup> *Joseph Mathew HC*, *supra* note 34 at para 43.