IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 101

OS 1175/1992

Between

Jewellery Industries (S) Pte Ltd

… *Plaintiff*

And

Sintat Rent-a-Car Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Landlord and Tenant — Agreements for leases

Version No 1: 11 Sep 2026 (01:05 hrs)

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Jewellery Industries (S) Pte Ltd v Sintat Rent-a-Car Pte Ltd

[1993] SGHC 101

OS 1175/1992
Judith Prakash JC
07 May 1993

1 ***Background***

2 The question posed by this originating summons was whether a clause contained in a tenancy agreement which purportedly conferred on the tenant an option to renew the tenancy for a further period was a valid and enforceable option.

3 There was no dispute as to the material facts. By a tenancy agreement dated 1 November 1989, the plaintiffs leased to the defendants commercial premises in Henderson Industrial Park (`the premises`) for a period of three years commencing on that date and ending on 31 October 1992, at a monthly rental of $12,000. Clause 3(c) of the tenancy agreement (`the option`) provided:

> (3) And the landlord hereby agrees with the tenant as follows:
>
> ...
>
> (c) provided always that the landlord does not intend to sell or dispose of [the premises] the landlord shall on the written request of the tenant made not less than three (3) months before the expiration of the term hereby created and if there shall not at the time of such request be any existing breach or non-

> observance of any of the covenants on the part of the tenant hereinbefore contained grant the tenant (at the tenant`s costs and expenses (sic) to execute a renewed tenancy (sic) and counterpart thereof) an extension of two (2) years from the expiration of the term hereby created subject only to the right of the landlord to review the rental payable and upon such terms and conditions as may be agreed by the parties hereto with the exception of the present provision for renewal.

4 By letter dated 20 July 1992 the defendants purported to exercise the option. In the letter the defendants asked the plaintiffs: `Please let us know the new rental payable together with the terms and conditions of the new agreement.`

5 Subsequently (the precise date was not in evidence) the plaintiffs informed the defendants that they intended to sell the premises and that accordingly the option could not be exercised. The defendants disputed the plaintiffs` ability to nullify the option on the basis that an intention to sell would only prevent the option being exercised if the plaintiffs had entered into an agreement for sale of the premises. Their solicitors contended in a letter dated 11 August 1992 to the plaintiffs` solicitors that: `In the absence of an actual sale, [the plaintiffs] are obliged to grant [the defendants] an extension of two years ...`. The defendants` solicitors also proposed that an arbitrator be appointed to determine the proper interpretation of the clause. This suggestion was not accepted by the plaintiffs.

6 The defendants did not vacate the premises on 31 October 1992. On 6 November the plaintiffs` solicitors wrote to the defendants` solicitors stating, inter alia, that:

> (i) there had not been an agreement to renew the tenancy in all respects including the renewed rental and the terms and conditions of the renewed tenancy;

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> (ii) the tenancy had therefore expired on 31 October 1992;
>
> (iii) the defendants` continuing occupation of the premises was unlawful and amounted to a holding over for which the defendants were liable to the plaintiffs.

7 The letter concluded by demanding that the premises be delivered to the plaintiffs within seven days from the date thereof and giving the defendants notice that, in default, proceedings for recovery of possession would be commenced.

8 On the same day, on a without prejudice basis, the plaintiffs offered to grant the defendants a further tenancy for two years at a rental of $20,000 a month but otherwise on the same terms and conditions as contained in the original tenancy agreement (excluding the option for renewal). In response the defendants indicated that they were agreeable to an extension of two years on the terms and conditions of the tenancy agreement subject only to a rent based on the current prevailing rate. They suggested that an independent valuer be appointed to carry out a valuation of the premises and that the expense of such an appointment be shared equally by the parties.

9 The plaintiffs rejected the defendants` suggestions and on 11 December 1992 they filed this originating summons. Basically the reliefs sought by the plaintiffs were first, the recovery of possession of the premises; secondly, that the defendants be ordered to pay mesne profits from 1 November 1992 at the rate of $24,000 a month until vacant possession was delivered up; thirdly, interest on mesne profits; and finally, costs on the indemnity basis.

10 **Construction of option clause**

11 The plaintiffs contended that the option was void for uncertainty. This meant that I was required to analyse the terms of the option carefully whilst

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being cognizant of the fact that the court is reluctant to hold void for uncertainty any provision which, like the option, was intended to have legal effect. Such a provision must be approached with reasonable goodwill when determining whether it embodies such uncertainty of concept as to make it void. See **Brown v Gould** [1971] 2 All ER 1505[1972] Ch 53[1971] 3 WLR 334 **Brown v Gould** [1971] 2 All ER 1505[1972] Ch 53[1971] 3 WLR 334 was also a case in which the court had to determine the validity of an option for renewal in a tenancy agreement. In dealing with the challenges to the option mounted in that case, the trial judge, Megarry J stated:

> *Furthermore, it does not seem to me that counsel for the defendants has been able to demonstrate that this is a case of uncertainty in either of the two main ways in which that can be done. A provision may be void for uncertainty because it is devoid of any meaning ... The other main head is where there is a variety of meanings which can fairly be put on the provision, and it is impossible to say which of them was intended. Mere ambiguities may sometimes be resolved by the application of legal presumptions, and so on: but where the language used is equally consistent with a wide range of different meanings, it may be impossible to discern the concept which the provision was intended to enshrine.*

12 The option had five elements:

> (i) In order for the option to have been exercisable at all, the landlord must not, at the time of the exercise, have had an intention to sell the premises.
>
> (ii) A valid exercise of the option would have to be made in writing no less than three months before the expiration of the term of the tenancy.
>
> (iii) The option could not have been validly exercised if at the time of the purported exercise there was an existing breach or non-observance on the part of the tenant of the covenants which he had to observe.
>
> (iv) The renewed tenancy would be subject to the right of the landlord to review the rental payable.

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> (v) The renewed tenancy would be upon such terms and conditions as might be agreed between the parties.

13 Whilst the main thrust of the plaintiffs` attack was directed at element (iv), elements (i) and (v) also presented problems. None of these elements was devoid of any meaning. Accordingly the option could only be held to be void for uncertainty if the language of any of these material parts made it impossible to discern the concept which such portion was intended to enshrine.

14 The first area in which the certainty of the option was challenged was the provision that there would be no ability to renew if the landlord intended to sell. The plaintiffs took the view that this meant that as long as they told the defendants that they wanted to sell the premises the option became null. The defendants for their part contended that before the option was so nullified, the intention to sell had to be expressed by a legal commitment on the part of the plaintiffs to sell.

15 I did not agree with either position. In my judgment, however, the dispute was over the manner in which an intention to sell had to be expressed and not over the actual meaning of the words. There was no uncertainty about the concept of an intention to sell. The only question that arose was whether such an intention on the part of the plaintiff company existed simply because the plaintiffs said they possessed it or whether they had to give some external evidence of the existence of the intention. In my opinion in order to say that the option was not exercisable because they intended to sell the premises, the plaintiffs would have had to point to an overt act manifesting such intention. It was not sufficient for the plaintiffs on receipt of the written exercise of the option to say, as they did in this case, that they intended to sell and that therefore they did not accept that exercise. On the other hand, to validly assert that the option was no longer capable of being exercised it would not have been

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necessary for a contract of sale to have been concluded. It would have been sufficient if the plaintiffs had shown that their intention had taken an outward form, for example, by the appointment of a real estate agent or the advertisement of the premises for sale or even, perhaps, by the passing of a board resolution authorizing the sale.

16 The second element of the option which was attacked as being uncertain was the provision that the rent for the renewed period was subject to the landlord`s review. The plaintiffs pointed out that there were three types of option as categorized by Megarry J in ***Brown***

17 `s case.1 These were:

> (i) an option for renewal at `a rent to be agreed` which is prima facie void (see **King`s Motors (Oxford) Ltd v Lax** [1969] 3 All ER 665[1970] 1 WLR 426) as an agreement to make a contract;
>
> (ii) an option which is expressed to be exercisable at a price to be determined according to some stated formula without any effective machinery being in terms provided for the working out of that formula; and
>
> (iii) an option which provides both the formula and the machinery.

18 Counsel for the plaintiffs submitted that the option in this case fell within the first class mentioned above. She said that the words `subject only to the right of the landlord to review the rental payable` gave rise to highly conflicting interpretations which could not be reconciled. On the one hand, the plaintiffs themselves thought that the language gave them an unfettered right to impose any rent which they wanted for the new term. On the other hand, the defendants had rejected the rent imposed by the plaintiffs and argued that the plaintiffs could only determine the new rental on the basis of the currently prevailing rate as ascertained by an independent valuer.

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19 In my opinion the language of this part of the option was consistent with a range of different meanings. It was quite possible, on a strict reading, to agree with the plaintiffs that it conferred on them an absolute discretion to determine the rent at any level which they chose. Such an interpretation would, however, put the defendants, as tenants, at the mercy of the landlords as to rent and would negate the usefulness of the option to the defendants. This surely was not what the defendants intended when they signed the tenancy agreement and sought to protect the security of their tenure by the inclusion of the option.

20 It was also easy therefore to give the clause an alternative interpretation, ie that it necessarily implied that the plaintiffs` right of review was not unfettered but had to be exercised within a certain boundary. This interpretation raised a question as to the nature of such boundary. The defendants said the rent review would be delimited by the prevailing market rate. This was a reasonable reading. But who was to determine what that rate was? The clause offered no help at all on this point. Would such arbiter be the landlords themselves, or the landlords in agreement with the tenants, or an independent valuer?

21 Whilst when no machinery is provided to resolve disputes of this kind, the court may step in and save the day as in ***Brown***

22 `s case,1 such an approach would not have resolved the conflict here. The issue was not only as to how the current market rate was to be determined but also as to whether such rate was applicable at all. There was undoubtedly an uncertainty of concept at the heart of this provision since it was not even possible to ascertain from its wording on what basis the rental for the extended period should be determined.

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23 The final portion of the option also presented a difficulty. The renewed tenancy was, apart from duration and rent, to be `on such terms and conditions as may be agreed to between the parties`. The phrase `to be agreed` is the classic phrase employed when parties do not want to be contractually bound. An option that states rent for the new term is `to be agreed` will be void as pointed out above, as a mere agreement to agree. In the context of this option the words `as may be agreed` after `other terms and conditions` were significant.

24 Obviously the parties had not taken it for granted that all the other terms and conditions of the tenancy agreement would continue unchanged during the new term. They had envisaged that there might be a change in circumstances which would require some renegotiation of the previously agreed terms and therefore had given themselves this ability to reorganize the lease. Had this portion of the clause stood alone, it might not have presented an insuperable difficulty. If the main terms of a tenancy, ie duration, premises and rent, are agreed, the contract can take effect although some minor issues are left unresolved. When this portion that terms were to be agreed was read together with the provision regarding rent, however, a different light was thrown on the picture. If the rent was subject to renegotiation and was at large, then depending on the level of renewed rent, parties might very well have wished to change ancillary provisions of the lease such as the indemnity clauses, provision for payment of property tax and reinstatement obligations. These are considerations that can loom quite large in any commercial lease. Overall therefore this portion of the option only served to make it even more uncertain as to the precise legal rights which the option as a whole conferred on the defendants.

25 For the foregoing reasons, with the best will in the world I was unable to construe the option as certain and enforceable. Accordingly the plaintiffs were entitled to the reliefs sought and I made the following orders:

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(1) That vacant possession of the premises known as 207 Henderson Road #01-01 Henderson Industrial Park, Singapore 0315 be delivered by the defendants to the plaintiffs on or before 26 March 1993 in accordance with cl 2(r) of the tenancy agreement.

(2) That mesne profits from 1 November 1992 at the rate of $24,000 per month until vacant possession be delivered up pursuant to s 19(4) of the Civil Law Act (Cap 43, 1988 Ed) be paid by the defendants to the plaintiffs.

(3) That the defendants` security deposit of $36,000 be forfeited and applied towards settlement of the amount payable under order (2) aforesaid.

(4) That the defendants do pay to the plaintiffs the costs of these proceedings on an indemnity basis to be taxed or agreed.

26 **Outcome:**

27 Application allowed.

Judith Prakash JC

Ambika Rajendram (Cheow Hin & Partners) for the plaintiffs
Goh Yong Hong (Wong & Goh) for the defendants

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