United Lifestyle Holdings Pte Ltd v Oakwell Egineering Ltd
[2002] SGHC 73

Case Number : Suit 875/2001

Decision Date : 17 April 2002

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Tan Kay Kheng and Lena Wong (Wong Partnership) for the plaintiff; Jimmy Yap (Jimmy Yap & Co) for the defendant

Parties : United Lifestyle Holdings Pte Ltd — Oakwell Egineering Ltd

Contract – Contractual terms – Rules of construction – Relevance of context and factual background of transaction – Legislative and administrative background – Whether construction leads to absurd result – Intention of parties

Evidence – Admissibility of evidence – Context and factual background – Whether evidence of factual background admissible – Whether evidence of negotiations or intentions of parties admissible – s 94 proviso (f) Evidence Act (Cap 97, 1997 Ed)

Land – Sale of land – Conditions of sale – Option to purchase industrial leased property – Purchase contingent upon approval by HDB for change of use – Property in 'Light Industry' zone – HDB refusing to grant approval for change of use to 'warehousing' – Purchaser seeking to terminate agreement and recover deposit – Whether purchaser only can apply to change to restricted category of uses – Whether scope of condition covers application for change of use to 'warehousing'

Words and Phrases – 'Change of the use'

Judgment

GROUNDS OF DECISION

1 This action turns on the interpretation of the expression *"change of the use"* in an agreement ("the Agreement") for the sale and purchase of a lease of an HDB building and land ("the Property"). The Agreement was made by way of an option ("the Option") granted by the Defendant on 12 March 2001 and accepted by the Plaintiff on 26 March. The contentious phrase is contained in term 7.1 of the Option which makes the contract contingent upon two conditions. Term 7.1 provides as follows:

> "The sale and purchase herein shall be subject to and conditional upon the approval in writing of the Housing & Development Board ("HDB") for (i) the sale of the Property to the Purchaser by the Vendor and for (ii) the change of the use by the Purchaser of the Property (in this Option called "HDB's Approval", which expression shall, unless the context otherwise requires, include the approval of any other relevant government or competent authority)."

In respect of both conditions, term 8.3 provides for the agreement to be determined by either party without compensation if they could not be fulfilled within a certain deadline. Term 8.3 provides as follows:

> "Subject to there being no default refusal neglect and failure on the part of the Vendor and/or the Purchaser hereunder, if the Purchaser does not receive a copy of HDB's Approval by 31st May 2001, then both Vendor's and Purchaser's solicitors shall revert to HDB to obtain HDB's Approval by 15 June 2001 and, Completion shall then be scheduled on 29 June 2001. If the Purchaser does not

> receive a copy of the HDB's Approval by 15 June 2001 then either party shall be at liberty to terminate this Agreement by written notice in that behalf to the other party's solicitors. This Agreement shall then be null and void and shall be treated as cancelled and rescinded and deemed abortive; and the same shall be of no further effect whatsoever. The Vendor shall refund the Purchaser all monies paid together with any GST paid by the Purchaser hereunder free of interest and neither party shall then have any further demand claim right or action against the other for costs damages compensation or otherwise."

2 The Option was drafted by the solicitors of both parties and was settled after nine drafts made between 7 November 2000 and 9 March 2001, although term 7.1 itself did not undergo as many revisions. After the Option was accepted, the Plaintiff immediately applied to the HDB for approval for change of use of the Property to warehouse, from its existing use which was: (a) at the first storey, precision metal stamping (special industry); (b) at the second storey, assembling electrical and electronic component (light industry); and (c) at the third storey, ancillary office. The HDB refused to grant approval for such change and also rejected an appeal by the parties. The Plaintiff then purported to terminate the Agreement pursuant to term 8.3 and requested the Defendant to refund the deposit of $597,400 that had been paid over. The Defendant refused to do so and the Plaintiff took out this suit to recover the money. The Defendant contended that term 7.1 limited the Plaintiff to seeking approval to change to a use that was within what the Property was zoned under the Master Plan.

3 Counsel for the parties agreed that a finding on the construction of term 7.1 would determine the outcome of this action. Although evidence was given in relation to the negotiation of the transaction, at the submission stage counsel for the parties agreed that parol evidence was not required for the purpose of the interpretation of the Option. It is therefore not necessary for me to go into that aspect of the evidence. However the context of the transaction is relevant. In *Prenn v Simmonds* [1971] 1 WLR 1381 at p 1383, Lord Wilberforce said as follows:

> " In order for the agreement … to be understood, it must be placed in its context. The time has long passed when agreements, even those under seal, were isolated from the matrix of facts in which they were set and interpreted purely on internal linguistic considerations. … We must … inquire beyond the language and see what the circumstances were with reference to which the words were used, and the object, appearing from those circumstances, which the person using them had in view. Moreover, at any rate since 1859 (*Macdonald v. Longbottom*, 1 E. & E. 977) it has been clear enough that evidence of mutually known facts may be admitted to identify the meaning of a descriptive term."

It was argued in that case that prior negotiations could be looked at in aid of the construction of the written agreement. Lord Wilberforce rejected this and described in the following manner the nature of the evidence that was admissible (at p 1385):

> "In my opinion, then, evidence of negotiations, or of the parties' intentions, and a fortiori of [the plaintiff's] intentions, ought not to be received, and evidence should be restricted to evidence of the factual background known to the parties at or before the date of the contract, including the evidence of the 'genesis' and objectively the 'aim' of the transaction."

4 Lord Wilberforce had occasion to revert to this question in *Reardon Smith Line Ltd v Yngvar*

Hansen-Tangen [1976] 1 WLR 989, in which he said at p 995:

> "… No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as 'the surrounding circumstances' but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating."

5 In *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, Lord Hoffman said as follows in relation to the approach to be taken to resolve an ambiguity in the terms of a contract (at p 775):

> " It is of course true that the law is not concerned with the speaker's subjective intentions. But the notion that the law's concern is therefore with the 'meaning of his words' conceals an important ambiguity. The ambiguity lies in a failure to distinguish between the meanings of words and the question of what would be understood as the meaning of a person who uses words. The meaning of words, as they would appear in a dictionary, and the effect of their syntactical arrangement, as it would appear in a grammar, is part of the material which we use to understand a speaker's utterance. But it is only a part; another part is our knowledge of the background against which the utterance was made. It is that background which enables us, not only to choose the intended meaning when a word has more than one dictionary meaning but also, in the ways I have explained, to understand a speaker's meaning, often without ambiguity, when he has used the wrong words."

6 In *Tan Hock Keng v L&M Group Investments Ltd* (Civil Appeal No.600120/2001, 12 April 2002) the Court of Appeal held that where a contractual term is not clear, s 94(f) of the Evidence Act applies and extrinsic evidence is admissible to assist in the determination of the true construction.

7 Those authorities hold that evidence may be admitted of the factual background known to the parties at the time of contracting, including the genesis and purpose of the transaction, but not of the negotiations or intentions of the parties. In the present case, the relevant context and background include not only the facts of the transaction but also the legislative and administrative background. It is useful to set out the latter first.

Legislative and Administrative Background

8 The primary governing legislation is the Planning Act ("the Act") which seeks, as its long title states:

> "… to provide for the planning and improvement of Singapore and for the imposition of development charges on the development of land and for purposes connected therewith."

Rules have been made by the Minister pursuant to powers granted under s 61 in relation to a wide range of matters but the only relevant one is the Planning (Use Classes) Rules which will be dealt with in detail below. I now set out the provisions of the Act and rules, as well as the HDB administrative

requirements, that are relevant to the matter before me.

Master Plan

9 Section 6 of the Act defines the Master Plan as follows (hereafter all emphases have been added unless otherwise stated):

> "The Master Plan means the Master Plan that was originally submitted to and approved by the Governor in Council on 5th August 1958 under the provisions of Part IV of the Singapore Improvement Ordinance (Cap. 259, 1955 Ed.) as subsequently amended under the repealed Act or this Act, and includes the approved maps and written statement."

The term "approved map" is not defined while "written statement" is defined in s 2 as:

> "… that part of the Master Plan which includes a summary of the main proposals of the Master Plan with such descriptive matter as the competent authority considers necessary to illustrate the proposals of the Master Plan or as the Minister may, from time to time, direct for that purpose."

10 The Government has published a document entitled *Master Plan Written Statement 1998* ("the Written Statement"). The parties agree that this is the written statement under s 6 of the Act. I set out below relevant paragraphs of the Written Statement:

> "2.2 From the effective date (being the date of the Minister's approval) of the amendment to the Master Plan, all applications in respect of land within the demarcated area to which the Amendment Plan applies … shall be considered in accordance with the Amendment Plan and this Written Statement and not the Master Plan prior to the effective date of the amendment. …
>
> 3.1 The contents and provisions of the Amendment Plan and this Written Statement are intended to guide and control the physical development of the demarcated area. …
>
> 4.0 The zoning and plot ratio parameters referred to in the Amendment Plan prescribe the land use and development intensity permissible within the demarcated area. …
>
> 5.1 The zoning notations in the Amendment Plan reflect the permissible predominant use of land within the demarcated area. …
>
> 5.2 The competent authority may consider and approve uses (other than those permissible for the zoning) which are ancillary, related or compatible with the permissible predominant use. The type and quantum of uses that may be regarded as compatible with the predominant use shall be determined by the competent authority. The type and quantum of all ancillary or related uses that may be allowed for the support or management of the predominant use shall be determined by the competent authority having regard to the nature and scale of the development.

> 5.3 Land within an area indicated in the Amendment Plan as being zoned for General Industry or Light Industry use but with an existing approved warehouse development or a valid permission granted for a warehouse development shall, despite the zoning depicted in the Amendment Plan, be deemed to be zoned for Warehouse use with a maximum permissible intensity as that prescribed for the General Industry or Light Industry zone, as the case may be. …
>
> 5.5 The interpretations of zonings are given in Table 1
>
> 5.6 Within the zones indicated in the Amendment Plan, the competent authority shall control developments in such a manner as to preserve or promote the character of the area as indicated by the notations in the Amendment Plan and any development control plans as may be published by the competent authority from time to time.

11 Table 1 of the Written Statement sets out 26 zones, the principal ones being "Residential", "Commercial", "Residential with commercial at 1st storey only", "Commercial & Residential", "Commercial", "Hotel", "Business Park", "Light Industry", "General Industry", "Warehouse", "Residential/Institution", "Health & Medical Care", "Educational Institution", "Place of Worship" and "Civic & Community Institution". There is a zone called "White Site " which is a sort of wild card in which two or more of the following uses, viz. commercial, hotel residential or other compatible use, may be combined. The other categories relate to public amenities, examples being "Open Space", "Park & Garden", "Roads", "Utility", etc.

12 The zones relevant to the present suit are "Warehouse" and "Light Industry". Under the Warehouse zone, the uses are prescribed as follows:

> "These are areas used or intended to be used mainly for the storage of goods."

And the following examples of developments are listed:

> "1. General Warehouse
>
> 2. Open Storage
>
> 3. Central Distribution Centre."

The last column of this entry contains the following remarks:

> "The warehouse use quantum must not be less than 60% of the total floor area. The type of warehouse that may be allowed is subject to control by the competent authority and other relevant authorities. Not more than 40% of the total area shall be used for other permitted ancillary, related or compatible uses."

It can be seen that the permitted uses under the Warehouse zone relates to storage of materials. Up to 40% of the total area of land falling under this zone may be used for ancillary, related or compatible uses. Examples would be offices or workshops ancillary or related to the permitted uses.

13 In the entry under the Light Industry zone, the uses are expressed as follows:

> "These are areas used or intended to be used mainly for clean or light industrial

purposes."

Examples of developments are given as follows:

"1. Assembly and repair of computer hardware and electronic equipment

2. Printing, publishing and allied industries

3. Packing of dried foodstuff"

And the following paragraph is found in the remarks column:

"The industrial use quantum must not be less than 60% of the total floor area. The type of industry that may be allowed is subject to control by the competent authority and other relevant authorities. Not more than 40% of the total floor area may be used for other permitted ancillary, related or compatible uses."

Similarly up to 40% of the total area may be used for ancillary, related or compatible uses. The parties agree that this includes warehousing needs in respect of the assembly, repair, printing or packing activities.

Planning Permission

14 The relevant operational provision of the Act is s 12(1). It provides as follows:

"No person shall without planning permission carry out any development of any land …"

Section 3 contains the definition of "development". It is a rather complex definition, but one activity falling within its ambit is:

"… the making of any material change in the use of any building or land …"

However there is no useful definition of the term "use". Section 2 provides that the expression "use", in relation to land, does not include the use of land by the carrying out of any building or other operations on the land. This merely removes from the ambit of the term, activities pertaining to the construction of the building. The meaning of the term "use" in that provision will have to be determined from its ordinary and natural meaning in the context of the Act.

15 Section 12(1) therefore requires that planning permission be obtained before any person may make a material change in the use of any building or land. Section 13 makes provision for applications for such planning permission to be made to the competent authority. Section 5 provides that the competent authority shall be appointed by the Minister by notification in the *Gazette*. In GN No S 173/98, the Minister appointed the Chief Planner of the Urban Redevelopment Authority as the competent authority.

16 Section 14 sets out the considerations for the approval of an application for planning permission. Section 14(1) contains the general criterion for determination of written applications (defined in s 2 to include planning permission) and states as follows:

"14.-(1) Subject to subsection (2), in determining an application for written

permission, the competent authority shall act in conformity with the provisions of the Master Plan and any Certified Interpretation Plan in so far as they may be relevant."

The Master Plan is defined to include the Written Statement, of which I have set out the relevant contents above. What s 14(1) means is that a person who desires to make any material change in the use of any building or land will require planning permission from the competent authority. In determining such an application, the competent authority is required to act in conformity with what is prescribed in the Written Statement. Therefore if the Master Plan provides that the building in question is zoned under "Warehouse" then, as stated in the Written Statement, it must be used mainly for the storage of goods. However, pursuant to the statement in the remarks column of Table 1 of the Written Statement, the competent authority may permit up to 40% of the total area to be used for ancillary, related or compatible purposes.

17 There is an exception to this in s 14(2). This subsection permits the competent authority, with the Minister's approval, to deviate from the requirement in subsection (1) under certain circumstances. Section 14(2) provides as follows:

> "(2) Where the Minister approves, the competent authority need not act in accordance with subsection (1) in any of the following circumstances:
>
> (a) the land to which the application relates (referred to in this subsection as the relevant land) is or will be required for any public purpose or for the provision of any utility services or infrastructural, social or transportation facility;
>
> (b) the relevant land, or its locality, is the subject of a planning, transportation, conservation or preservation study being carried out by the competent authority or any other public authority;
>
> (c) the provisions of the Master Plan in so far as it relates to the relevant land, or its locality, is being reviewed by the competent authority;
>
> (d) a proposal to amend the provisions of the Master Plan in so far as it relates to the relevant land, or its locality, has been submitted to the Minister for approval under section 8; or
>
> (e) the competent authority is of the view that the development proposed in the application is incongruent with the developments on land adjoining the relevant land or other land in the locality."

Section 14(3) provides that should any of the circumstances listed in sub-paragraphs (a) to (e) exist then he need not act in accordance with s 14(1) and may determine the application in the manner as the Minister may approve. It would follow that otherwise, he must act in accordance with s 14(1).

Planning (Use Classes) Rules

18 The Planning (Use Classes) Rules ("the Use Classes Rules") promulgated on 9 January 1981 were revoked and replaced by the Planning (Use Classes) Rules 2001 (No. S 371/2001) on 1 August 2001. At the material time, before the acceptance of the Option on 26 March 2001, the Use Classes Rules were in effect. The material rule is r 3(1) which provides as follows:

> "Where a building or land has an existing use falling within any class specified in the Schedule and is not subject to any restriction imposed by the competent authority under section 10 of the Act, the use of such building or land for any other purpose of the same class shall not be deemed for the purposes of Part III of the Act to involve development of the land."

Under r 2, "existing use" is defined as meaning:

> "the use to which a building was put on 1st February 1960, or a use approved under section 10 of the Act"

And the Schedule to the Use Classes Rules provides as follows:

> "(a) Class I Use as a shop or a food-shop.
>
> (b) Class II Use as an office.
>
> (c) Class III Use as a light industrial building.
>
> (d) Class IV Use as a general industrial building.
>
> (e) Class V Use as a warehouse.
>
> (f) Class VI Use as a building for public worship."

19 The effect of r 3 is best illustrated by an example and I take Class III, "Use as a light industrial building". In the Written Statement, examples of uses under "Light Industry" zone include assembly of electronic equipment and printing. Say a particular building has an existing use (either that to which it was put on 1 February 1960 or a use approved under s 10 of the old Act) as a printing press. This brings it within Class III. Pursuant to r 3(1), if the building were now used for assembly of electronic equipment it would not be deemed to involve development of the land because the new use falls within the same class as the existing use, and which is a class specified in the Schedule. Part III of the Act contains s 12. As such, this change from printing press to assembly of electronic equipment is deemed not to involve development of land by operation of r 3(1) and would not require the planning permission specified in s 12 of the Act.

HDB requirements

20 The Property is a leasehold granted by the HDB and one of the terms of the lease is that HDB approval is required for any assignment of the lease. The HDB Industrial Properties Department issues a form for the assignment of the industrial leased land, into which category the Property falls. This form is entitled "General Guidelines on Assignment of Industrial Leased Land" and section (A) thereof lists the following procedure:

> "Assignment of the **remaining term of the original lease** is allowed subject to

the following procedures, terms and conditions.

> **A) <u>Procedures:</u>**
>
> 1) The proposed assignee is required to complete (i) Form A – the Application for Assignment and (ii) Form 1A – Application Form for Proposed Use of Industrial Premises (Clearance from Pollution Control Department (PCD)).
>
> 2) The proposed assignee is to obtain clearance from the Pollution Control Department (PCD), Ministry of the Environment, and the Urban Redevelopment Authority (URA) on the proposed use at the following address: …
>
> 3) To submit Form A – Application for Assignment to the **INDUSTRIAL PROPERTIES DEPARTMENT** at the following address so to allow us to forward to the Economic Development Board/ Land Office for their approval on the proposed assignment. Please note that the HDB shall only proceed to evaluate the assignment application upon the receipt of PCD's and URA's approvals on the proposed use by the assignee:
>
> …"

21 In Form 1A the applicant is required to provide details of the premises to be assigned. The first information asked for appears in the following manner:

> "Type of Factory : Flatted/Standard/Terrace Workshop/Industrial Land"

Presumably the applicant is required to delete the inapplicable descriptions. Another item of information required falls under the rubric "Proposed Activities". The rest of the form provides for information on (a) the applicant's particulars; (b) sub-tenancies; (c) nature of raw materials and chemicals to be stored and their control measures; (d) manufacturing processes; (e) sources of air pollutants; (f) water consumption and effluent discharge; (g) industrial wastes, both solid and toxic; and (h) sources of noise pollution.

22 It would appear from these documents that HDB requires the proposed assignee of an industrial property first of all to obtain the clearance of the PCD and URA in relation to the proposed use of the property.

Factual Background

23 With the legislative and administrative background in mind, I turn to the facts of the matter before me. The Property is a 3-storey industrial building situated at 8 Aljunied Avenue 3. The building was erected by Pico Art International Pte Ltd ("Pico") in the early 1980s on Lot 6023 of Mukim 24 which PICO leased from the HDB for a period of 30 years from 1 September 1983. The land is sited within an area zoned 'Light Industry' in the Master Plan. 1(ix) of the Special Covenants and Conditions of the Lease states as follows:

> "Not to use or to permit or suffer the said land or any building thereon to be used otherwise than as a factory to provide a complete range of artistic design, fabrication and assembly of signboards, advertisements and exhibition stands subject to the approval of the Competent Authority appointed under Section 3 of the Planning Act."

The Defendant purchased the lease from Pico in 1989 having successfully obtained the requisite approvals in respect of that assignment. In late 2000 the Defendant decided to sell the Property to ease its cash flow problems.

24 The Plaintiff is the holding company of United Lifestyle Pte Ltd ("UL") and owns 75% of the share of United BMEC Pte Limited ("BMEC"). The Plaintiff is a wholly-owned subsidiary of Hotel Plaza Limited, a public listed company and is related to United B&B Italia (Singapore) Pte Ltd ("B&B") and United Venture Furnishings Pte Ltd ("Venture"). UL is in the business of trading in used and new exercise equipment and BMEC is in the business of selling medical/biomedical health products and equipment. B&B is in the business of selling imported Italian furniture and Venture is in the business of selling furniture and contracting for built-in furniture and interior decoration work. In September 2000, the Plaintiff first considered the purchase of space for the use by UL, B&B and BMEC due to the expansion and growth of their businesses. Also, for operational efficiency and better control, it was deemed necessary to consolidate these spaces and operations under one roof. The Plaintiff estimated that UL would need about 8,700 square feet of space for storage of heavy equipment and for workshop and showroom purposes, B&B would need about 8,000 square feet for storage of ready made imported furniture, and BMEC would need about 6,000 square feet for storage, testing labs and offices. However to allow for future expansion, the Plaintiff targeted the net area of the new property to be between 30,000 and 50,000 square feet. On 6 October 2000, the Plaintiff contacted the Defendant's estate agent, Colliers Jardine (Singapore) Pte Ltd ("Colliers"), who recommended the Property for the Plaintiff's consideration. Around 24 October 2000 Wey Kim Long ("Wey"), the Deputy President of the Plaintiff's parent company Hotel Plaza Ltd, went to view the Property with two of his staff. The following day, 25 October 2000, the Plaintiff wrote to Colliers expressing interest in purchasing the Property at S$5.7 million, subject to contract.

25 On 27 October the Plaintiff received from the HDB Industrial Properties Department the form for the assignment of the Property. I have described above the relevant contents of this form. On the same day, Colliers wrote to the Defendant to advise the Plaintiff was keen to purchase the Property but this was subject to the approval of the Plaintiffs' board of directors and due diligence checks. The parties' representatives met on 2 November 2000 to discuss the sale. On 7 November the Defendant's solicitors handed the first draft of the Option to the Plaintiff's solicitors. The final version of the Option was settled on 9 March 2001. The Defendant's representative signed it on 12 March and the Plaintiff's representative signed the acceptance on 26 March.

26 The Plaintiff proceeded to make the requisite applications to the HDB in respect of the proposed assignment. On 12 April 2001 the Plaintiff's architects submitted to the HDB, on the Plaintiff's behalf, plans for additions and alterations, and change of use in respect of the Property. Those plans indicated that 60.88% of the gross floor area of the Property would be used as for warehousing with the remainder for ancillary office and showroom. The HDB replied on 18 April and stated as follows in paragraph 2:

> "2 We wish to highlight that the subject premises is designated for light industrial use only. As such, we are not able to consider your application for change of use from light industrial use to warehouse use."

The Plaintiff attempted to get the HDB to change its mind about the application. On 4 May 2001, the Plaintiff appealed to the HDB to re-consider approval *"to change the designated use of the subject premise of light industrial to warehousing use"*. Form A – Application for Assignment was resubmitted. Under the item (1)(E) of that form, marked *"Proposed Trade Activities At The Purchased Property"*, the Plaintiff filled in *"WAREHOUSING (60/40% RULING)"*. By its letter dated 23 May 2002, the HDB rejected the appeal saying as follows at paragraph 2:

> "2 We have considered your appeal carefully and regret to inform that we are not able to accede to your request to change the use of the subject premises to warehousing as the subject site is designated for light industrial use only. Thank you."

27 It is agreed between the parties that all reasonable efforts had been made by the Plaintiff in respect of this application and the only issue is whether condition (ii) of term 7.1 envisages that the Plaintiff had the right to apply for change of use to "warehousing". It is the Defendant's case that the Plaintiff is not entitled under the terms of the Agreement to apply to change the use of the Property to one that fell outside one of the uses within which it was zoned under the Master Plan, i.e. "Light Industry". It is the Plaintiff's case that it is within the contemplation of the Option that it is entitled to apply for a change of use to "warehousing". The case turns entirely on this issue.

Construction of term 7.1

28 Condition (ii) of term 7.1 bears repeating. It goes as follows:

> "The sale and purchase herein shall be subject to and conditional upon the approval in writing of the [HDB] … for (ii) the change of the use by the Purchaser of the Property (in this Option called "HDB's Approval", which expression shall, unless the context otherwise requires, include the approval of any other relevant government or competent authority)."

29 The term refers to "approval of the HDB for the change of use by the purchaser". This envisages that the purchaser would make an application to the HDB for change of the use of the Property. On the face of it, there are two possibilities to the scope of this application:

> (i) the Plaintiff is entitled to apply to change to any use without restriction; or
>
> (ii) the Plaintiff is only entitled to apply to change to a restricted category of uses.

Counsel for the Plaintiff, Mr Tan, concedes that the first interpretation cannot be the correct one. No doubt he would have difficulty in supporting such a position. For this would mean that, if the Plaintiff had made an application to change the use to one that is totally incongruent with the surrounding land, e.g. residential use or hotel use, and which, clearly, would be disallowed by the competent authority, the Plaintiff would be entitled to back out of the purchase without incurring any liability. Such an agreement would give the Plaintiff *carte blanche* to change its mind about the purchase, so long as it makes an application within the time frame prescribed. In *Wickman Machine Tools Sales Ltd v L.G. Schuler AG* [1974] A.C.235 at 251, Lord Reid said as follows:

> "The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result, the more unlikely

> it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make their intention abundantly clear."

30 Such an approach was taken by Warren Khoo J in *Singapore Airlines Ltd v Ahlmark* [2000] 1 SLR 603. The plaintiff, Ahlmark, was employed by the defendant, SIA, as a pilot under a collective agreement. Clause 31 of the collective agreement provided for two modes of termination of employment by SIA: (i) under clause 31(1), without cause and with by three months' written notice or payment of three months' salary in lieu of notice; and (ii) under clause 31(2), for misconduct or dereliction of duty after due inquiry. Ahlmark had also signed a separate training agreement with SIA under which he was given a course of training to enable him to qualify to fly a Boeing 747. In return he was to remain in the service of SIA for at least five years. Clause 3(g) of the training agreement provided as follows:

> "It is further agreed and declared that if the trainee in the sole opinion of SIA: …
>
> > (g) is dismissed or has his services terminated for any reason whatsoever either during the course of training or during the period of five (5) years referred to in clause 4 of this Agreement;
>
> then and in every such case the trainee shall be liable for himself, his heirs, executors or assigns to pay SIA on demand as liquidated damages the amounts set out in Schedule A to this Agreement."

While travelling as a passenger on an SIA flight from Los Angeles to Singapore, Ahlmark became drunk and made a nuisance of himself. He was off-loaded in Tokyo and had to continue his flight the following day. SIA subsequently asked him to give a written explanation for his behaviour and he complied. About a week after that, SIA wrote to him to terminate his employment pursuant to clause 31(1), with immediate effect with three months' pay in lieu of notice. However SIA also invoked clause 3(g) of the training agreement and claimed liquidated damages on the ground that he had his services terminated within the five-year period.

31 Warren Khoo J did not agree with the submission made by SIA that the literal meaning of clause 3(g) should prevail. This was because it would lead to the absurd result that SIA would be able to recover liquidated damages from Ahlmark by exercising its right of termination without cause. He reasoned as follows, at 19-22:

> "19 … the clause must be construed in such a way as not to give rise to an absurd result. It would be utterly absurd if the company could terminate without cause and then claim to be entitled to liquidated damages from the trainee. The redundancy example cited by plaintiff's counsel is a good one. Interpreting the clause in the broad way suggested is plainly against common sense and reason. It can be assumed that no such absurd result was intended.
>
> 20 The court should try to uphold an agreement rather than to undo it. If a sensible meaning could be given to a provision so as to uphold it, the court should try to do so. The learned editors of Chitty on Contracts (27th Ed) para 12-069 put the position correctly thus:
>
> > If the words used in an agreement are susceptible of two meanings, one of which would validate the instrument or

> the particular clause in the instrument, and the other render it void, ineffective or meaningless, the former sense is to be adopted. This rule is often expressed in the phrase *ut res magis valeat cum pereat*. Thus, if by a particular construction the agreement would be rendered ineffectual and the apparent object of the contract would be frustrated, but another construction, though *per se* less appropriate looking to the words only, would produce a different effect, the latter interpretation is to be applied, if it can possibly be supported by anything in the contract."

32 Returning to the present case, the scope of term 7.1 must therefore be that envisaged under the second possibility, i.e. that the Plaintiff is only entitled to apply to change to a restricted category of uses. The question then turns to the scope of this restricted category. There is a covenant in the lease restricting the use to which the Property may be put. This is found in 1(ix) of the Special Covenants and Conditions to the Lease which states as follows:

> "Not to use … the said land or any building thereon … otherwise than as a factory to provide a complete range of artistic design, fabrication and assembly of signboards, advertisements and exhibition stands subject to the approval of the Competent Authority appointed under section 3 of the Planning Act;"

In addition, 1(vii) obliges the lessee to obtain the written consent of the HDB before it can transfer the Property to another party. Read together, it would mean that, unless the purchaser intends to use the Property in exactly the manner specified in 1(ix) of the lease, he would need to obtain permission from the HDB for the new use. In considering such an application, the HDB would no doubt have its internal criteria. No evidence was adduced as to what these criteria are, but I do not understand any party to dispute that they exist. I can therefore safely infer their existence from the fact that there is a requirement in the lease for permission to be obtained from the HDB for any change of use.

33 On those premises, term 7.1 is clearly intended to cover this HDB internal criteria and aimed at ensuring that the parties would not be in breach of the restrictive covenants that ran with the Property. From the manner in which term 7.1 (set out in full in 1 above) is formulated, it exists for the benefit of both parties and not just the Plaintiff. Condition (i) relates to HDB approval for the sale and condition (ii) to HDB approval for change of use. Term 8.3 (reproduced in 1 above) provides that in the event that there is no HDB approval, and this is not caused by the default of any party, either side has the opportunity to terminate the Agreement without liability. Hence it would protect the vendor as much as the purchaser against any refusal on the part of the HDB to grant the approvals in question. There could not be an unconditional sale because of the restrictive covenants, and it was necessary for the parties to obtain the approval of the HDB before the sale could proceed.

34 Mr Tan submits that it covers more than this HDB internal criteria. He suggests that it must include uses that are related or ancillary to the zone which is "light industry". He submits that "warehousing" is sufficiently related or ancillary to "light industry". It is also related to the businesses and operations of the Plaintiff's subsidiaries and related companies who were the intended occupiers of the Property. Therefore, he argues, the scope of term 7.1 should cover an application for change of use to "warehousing".

35 There are two problems to this submission. The first is that if his position is that it covers more than the HDB criteria, there is nothing in the Agreement that suggests any limitation to its scope. The

court cannot save the clause by imputing a limit where there is none on the face of it. In *Singapore Airlines Ltd v Ahlmark* [2000] 1 SLR 603, Warren Khoo J was also faced with a similar submission and he said as follows (at 21).

> "21 It is suggested that in the general context of the clause as a whole, the words 'terminated for any reason whatsoever' can be given a sensible meaning if one thinks of it as referring to termination for a reason akin to dismissal or for something that connotes a degree of fault or wrongful commission or omission on the part of the trainee, rather than termination for the convenience or at the will of the company. I must say it is an attractive suggestion in that it would help to save the clause. However, although I was attracted to the idea right up to the last minute in the writing of this judgment, I think I must resist it. The suggestion itself shows how uncertain and ambiguous the phrase is. To accept the suggestion is to give validity to a contractual provision which should in all conscience be struck down as void for uncertainty. …"

36 Secondly, as the following analysis would show, any application to the competent authority for change of use to "warehousing" was bound to fail. I have set out the relevant provisions of the Planning Act above. If the Defendant were to use the Property as a warehouse it would constitute a material change in its use as it is currently used for special industry and light industry with ancillary office. The Property is zoned "light industry" and in Table 1 of the Written Statement, "warehousing" is not one of the uses. Such a change would constitute development under s 3 of the Act and require planning permission pursuant to s 12(1). Under s 14(1), in considering an application for planning permission, the competent authority must act in conformity with the provisions of the Master Plan (which includes the Written Statement) except under the circumstances listed in s 14(2). None of the five circumstances listed in s 14(2) is germane to this action. Therefore the competent authority would be bound by law to reject an application for change of use of the Property to "warehousing".

37 Mr Tan submits that this cannot be the construction in view of the Planning (Use Classes) Rules 1981. Those rules render it unnecessary for planning permission to be obtained from the competent authority in respect of the Property where the proposed change is to a use within Class III: Use as a light industrial building. Therefore, Mr Tan argues, there is no question of applying to the competent authority if the new use is within Class III as the construction requires. As this renders term 7.1 otiose, this cannot be the correct construction. The response to that submission is really quite simple: the approval in term 7.1 is to be obtained from the HDB and not the competent authority. Indeed, the existence of the Use Classes Rules could also strengthen the Defendant's position as it highlights the need for approval from the HDB for change of use notwithstanding that no planning permission may be needed from the competent authority.

Conclusion

38 The matter basically turns on the intention of the parties when they entered into the Agreement as to the meaning of term 7.1. As Lord Wilberforce said in *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* [1976] 1 WLR 989 at p 996:

> "… When one speaks of the intention of the parties to the contract, one is speaking objectively - the parties cannot themselves give direct evidence of what their intention was - and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly when one is speaking of aim, or object, or

> commercial purpose, one is speaking objectively of what reasonable persons would have in mind in the situation of the parties. …
>
> … what the court must do must be to place itself in thought in the same factual matrix as that in which the parties were. All of these opinions seem to me implicitly to recognise that, in the search for the relevant background, there may be facts which form part of the circumstances in which the parties contract in which one, or both, may take no particular interest, their minds being addressed to or concentrated on other facts so that if asked they would assert that they did not have these facts in the forefront of their mind, but that will not prevent those facts from forming part of an objective setting in which the contract is to be construed. …"

39 From the context of the Agreement, including the genesis and commercial purpose of the transaction as well as the legislative and administrative background, I would hold that term 7.1 relates to HDB approval in relation to its internal criteria. It was not envisaged by the parties that the Agreement would be conditional upon the Plaintiff obtaining planning permission from the competent authority for change to a use falling outside what it is zoned in the Master Plan, whether to warehousing or any other use. I should add that as such an application is a major matter, if the parties had intended the sale to be conditional upon planning permission being obtained under the Planning Act, their solicitors would have drafted the Agreement on much clearer terms.

40 The Plaintiff's action is therefore dismissed. The Defendant is entitled to the deposit, amounting to $537,660, that has been paid into court and there shall be an order for payment out of this sum to the Defendant's solicitors. There shall be an order for the Plaintiff to pay the Defendant's costs on a standard basis.

Sgd:

LEE SEIU KIN
JUDICIAL COMMISSIONER

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