Lim Chin San Contractors Pte Ltd *v* Shiok Kim Seng (trading as IKO Precision Toolings) [2010] SGHC 243

Case Number : Suit No 1019 of 2009

Decision Date : 19 August 2010

Tribunal/Court : High Court

Coram : Philip Pillai J

Counsel Name(s) : Thio Shen Yi SC (instructed counsel) (TSMP Law Corporation) and Kelvin Chia Swee Chye (Balkenende Chew & Chia) for the plaintiff; The defendant in person.

Parties : Lim Chin San Contractors Pte Ltd — Shiok Kim Seng (trading as IKO Precision Toolings)

Equity

19 August 2010 Judgment reserved.

Philip Pillai J:

Introduction

1 The plaintiff is the developer of Alpha Industrial Building ("the building") and the owner of, *inter alia*, unit #05-11 in the building ("the unit"). The defendant was the tenant of the unit under two successive tenancy agreements. The formal terms of both leases have run out. In this action, the plaintiff is claiming for the repossession of the unit, arrears in rent and double rent for holding over. The defendant is resisting the claim on the basis that he is entitled to purchase the unit pursuant to a contractual right or proprietary estoppel. There is also the issue of who should bear the responsibility for the construction of a mezzanine floor in the unit which is irregular under planning regulations.

Facts

2 The plaintiff was represented by instructed counsel, Mr Thio Shen Yi SC. Its sole witness was Mr Lim Chin Leong, the plaintiff's managing director. The defendant, Mr Shiok, appeared in person. He gave evidence himself and also called Mr Yeo Hock Chuan who is a property agent who acted for him in his initial dealings with the plaintiff. The evidence is as follows.

The first tenancy agreement

3 Mr Lim and Mr Shiok first met sometime in late November or early December 2004. On 9 December 2004 they entered into a tenancy agreement for the unit ("the first tenancy agreement"). The term was for two years, from 1 January 2005 to 31 December 2006. Rent was fixed at $3,200 a month. Clause 3(d) of the first tenancy agreement read: [note: 1]

> During the term of the Tenancy, THE LANDLORD agrees not to sell THE SAID PREMISES to any purchasers other than THE TENANT at the predetermined sale price of **Singapore Dollars Four Hundred Sixty Two Thousand And Fifty Four Only (S$462,054.00) or at S$159.00 per sqft**, exclusive of GST and stamp duty which are payable by THE TENANT. All rental payable shall be calculated till the date of sale completion.

4 Mr Lim characterised clause 3(d) as follows in his Affidavit of Evidence-in-Chief ("AEIC") at [10]:

> The aforesaid Clause 3(d) of the 1st Tenancy Agreement is, as I am advised, a right of pre-emption. While the right was subsisting, the Plaintiffs were not allowed to sell the Premises to anybody except the Defendant.

It is pertinent to note that Mr Lim, rather artfully, stopped shy of saying that *he* understood clause 3(d) to be a right of pre-emption. Mr Lim's evidence on the stand, when he was cross-examined by Mr Shiok, was significantly different. On the second day of the trial, there was this exchange: [note: 2]

> Q: During [our first meeting in December 2004], we conclude the rental of the unit 05-11 and the option to purchase the unit at $159 per square feet. Do you agree?
>
> A: Yes, I agree.

A similar exchange was as follows: [note: 3]

> Q: I will put it to you, if you have not given me the option to purchase at 159, I would not have invest in this unit, neither would I take up the rental.
>
> A: I disagree with you. It's stated very clearly in the tenancy agreement that you have to buy within the tenancy agreement and I'm willing to sell you at $159 per square feet. But it was very unfortunate that you do – that you did not take this opportunity to buy at all.
>
> Q: Look, Mr Lim, I put it you to you at a later stage on this issue, because all this is going to happen in December 2006 and I want you to know, do you – and I put it to you that $159 per square feet was to me an option to purchase and –
>
> Def:Your Honour, I – I'll rephrase it again, correct.
>
> Q: Do you agree that the discussion ended with $3,200 for 2 + 2 rental lease with an option to purchase at $159 per square feet?
>
> A: Yes, I agree but it was for the first 2-year.

Likewise, on the fourth day of the trial: [note: 4]

> Q: In December 2004, I came to Alpha Building with my agent Jeffrey Yeo and we met you there. Do you agree?
>
> A: Yes.
>
> Q: Mm. Do you agree that during this meeting, we discussed the tenancy agreement and the option to purchase?
>
> A: Yes.

And later on the same day: [note: 5]

Q: [Refers to clause 3(d) of tenancy agreement]

A: Yes.

Q: Yah, do you agree that, er, I have the first right to buy this unit within the 2 years' tenancy agreement?

A: Yes.

All these were not changed in re-examination, where Mr Thio sought to establish that there was no option granted between the parties: [note: 6]

Q: Now, earlier this morning, you were asked this question, that you agreed – during the meeting on December 04, you discussed the tenancy agreement and option to purchase and you said yes. Now, a lot of terms have been used loosely, so what I want you to do, is go to the plaintiff's bundle of documents, grey bundle. The tenancy agreement is at page 9. When you say "option to purchase", what are you referring to in this tenancy agreement?

A: Actually the word option to purchase is – is the tenancy is given at that point in time within 2 years to purchase and within the 2 year, 3 months before the expiry, he has to make his option to purchase.

Q: No, no, sorry. Which part of the tenancy agreement are you referring – does this "option to purchase" refer to? Because just now what you said is the option –

A: I think it is 3 – 3(d), page 12.

Q: 3(g).

A: 3(d). Denmark.

Q: Okay. [Moves on.]

5 Mr Shiok and Mr Yeo were also cross-examined on the meaning of clause 3(d). Unsurprisingly, they confirmed that it was a right of pre-emption. However, they were not examined on the actual understanding reached between themselves. This is an issue which was obviously relevant because of Mr Shiok's insistence that he had an option and Mr Lim's repeated agreement on the stand with Mr Shiok's point that an option was in fact the true arrangement between them.

Renovations and the construction of the mezzanine floor

6 After signing the first tenancy agreement, Mr Shiok proceeded to renovate the unit. The renovation took five to six months. The contractor was Heng Loong Construction ("Heng Loong"), of which Mr Lim was a partner. The invoices issued by Heng Loong to Mr Shiok totalled $106,176.63. [note: 7] The work done included the construction of a mezzanine floor which effectively doubled the floor area of the unit. After the renovations were completed, Mr Shiok began operating his business from the unit. He ran a precision engineering business and his plant included heavy machinery.

7 The mezzanine floor turned out to be irregular and has since been removed pursuant to an order of Judith Prakash J. The issue is who should be responsible for the irregularity. The irregularity,

which was pointed out to the plaintiff by the Urban Redevelopment Authority ("URA") on 18 December 2006 and by the Building and Construction Authority ("BCA") on 25 January 2007, seemed to arise from the fact that the mezzanine floor area caused the gross floor area of the building to exceed the permitted limit. The precise nature of the irregularity was not clearly explained by either party. But both parties agreed on the fact of the irregularity and it is sufficient for present purposes to proceed on that basis.

8 In his AEIC at [9], Mr Shiok deposed that Mr Lim represented to him during their first meeting that the floor area of the unit could be expanded by constructing a mezzanine floor. At [10], Mr Shiok went on to say that Mr Lim represented to him that "they" would do all the relevant work and take care of obtaining the relevant approvals, *etc*, from the relevant government bodies.

9 In his AEIC, Mr Yeo Hock Chuan, who was Mr Shiok's property agent at the time of the first tenancy agreement, deposed that Mr Lim had represented to Mr Shiok that the floor area of the unit could be expanded by the construction of a mezzanine floor, and that Mr Lim could carry out the construction and attend to all approval requirements. He also said that Mr Lim showed Mr Shiok a room where Mr Lim already built a mezzanine floor and told Mr Shiok he could do the same. According to Mr Yeo, all this happened in his presence. During cross-examination, Mr Yeo conceded that he did not hear Mr Lim represent to Mr Shiok that approval of the mezzanine was guaranteed. [note: 8]

10 In his AEIC at [7]–[8], Mr Lim deposed that the plaintiff was prepared to allow Mr Shiok to construct the mezzanine floor, but did not warrant that the structure was or would be approved. At [28], Mr Lim elaborated that neither the plaintiff nor Heng Loong nor himself had ever represented, warranted, promised or agreed that the said works could be used by Mr Shiok as a mezzanine floor – any risk of illegality was assumed solely by Mr Shiok.

11 However, Mr Lim took varying positions in cross-examination. At first, he said that, as of November 2004 and for six months thereafter, nobody knew what a mezzanine floor was - it was only in April 2007 that the BCA raised the issue with the developer and the proprietors. [note: 9] Shortly after, however, Mr Lim said that, during the same period, all the proprietors of the building, including Mr Shiok, knew that a mezzanine floor was not allowed. [note: 10] A while later, when confronted with a police report by another proprietor that he was misled as to the legality of building a mezzanine floor, Mr Lim said that he could write off the report, as well as other similar reports by other proprietors, because he had told them that a mezzanine floor was illegal. [note: 11] Finally, when confronted with an invoice dated 1 June 2005 which expressly referred to "Partition Work at Mezzanine", Mr Lim said that the building of mezzanine floors was rampant at that time; he did the work at Mr Shiok's request; and the issue was not what he knew or did not know. [note: 12] Mr Shiok's various and varying positions contradict each other. If no one knew what a mezzanine floor was, they would not have known or been told that it was not allowed. If it was not allowed and they knew that, then why was Mr Lim building a mezzanine floor for Mr Shiok through Heng Loong?

12 It is also pertinent to refer to the following letter dated 27 November 2006 from 3P Architects to the URA on behalf of the plaintiff, where the following passage is found: [note: 13]

> We would like to seek your advice on payment of differential premium that may be leviable by Commissioner of Lands if we are proposing to increase the gross floor area to 11,602.59 sq m where the plot ratio will be 2.022 exceeding the allowable GPR of 2.00.

It was only after the URA refused permission that the plaintiff wrote to the relevant proprietors, including Mr Shiok, to remove their mezzanine floors. Prior to that, there is no evidence of the plaintiff

giving any kind of warning to the proprietors. This application by 3P Architects on behalf of the plaintiff is consistent with the plaintiff having represented to Mr Shiok that he could build a mezzanine floor.

13 On balance, therefore, I believe Mr Shiok's story in this regard. I find that, during their first meeting, Mr Lim must have told Mr Shiok that a mezzanine floor could be built and that he would apply for the necessary approvals for the mezzanine floor. There is also no evidence that Mr Lim warned Mr Shiok that a mezzanine floor would be irregular until approved. Since Heng Loong had not entered the picture at this point, these representations must have been made on behalf of the plaintiff. I also find that these representations must have materially induced Mr Shiok into entering into the first tenancy agreement.

Valuation report

14 Separately, Mr Shiok also obtained a valuation report from Jones Lang LaSalle Property Consultants Pte Ltd. The report was dated October 2005. The purpose of the report, as stated therein, was "[t]o determine the open market value of the subject property for financing purposes." The report determined that the open market value of the unit was $470,000. It noted that the mezzanine floor had not been approved, and therefore excluded it from consideration. It is pertinent to note that the report was given *after* the renovation works were completed. Thus it cannot be evidence that Mr Shiok proceeded with the construction of the mezzanine floor knowing that it was irregular.

The transition to the second tenancy agreement

15 Mr Shiok deposed in his AEIC at [29] –[32] that, after he entered into the first tenancy agreement, he always evinced an intention to purchase the unit. He also deposed that his intention was communicated clearly and unambiguously to the plaintiff. However, he conceded in cross-examination that his alleged intention to buy the unit was never expressed in writing. The earliest document where such an intention was recorded was dated 28 August 2008, [note: 14] when the parties' relationship had already become acrimonious.

16 As far as the documentary evidence went, there was a letter dated 10 October 2006 by the plaintiff asking Mr Shiok to confirm with the plaintiff by 16 November 2006 whether he wished to renew the tenancy for another two years at a monthly rent of $3,680. [note: 15] On 27 November 2006, Mr Shiok replied to request the then-existing rate of rent, $3,200, to remain if he renewed the tenancy. Mr Lim made this note on the letter: [note: 16]

> "Pending"
>
> Due to complication this unit cannot be sold till Sept 2007.
>
> [Mr Lim's signature]
>
> 4 Dec 2006

The authenticity of the note was not disputed. The cross-examination of Mr Lim on the two letters and his note is as follows: [note: 17]

> Q: And do you agree at that time this letter [*ie* the plaintiff's letter of 10 October 2006] is to

increase the rental rate to 3,680 per month?

A: In fact you should be the one before the ter – before the expiry of the tenancy agreement write to us, 3 months before the expiry –

Q: Yes.

A: – and this is the second month before the expiry. In fact we are doing you a favour.

Q: I put it to you I – that time I do not intend to rent and I intend to buy and in fact I chase you for the S&P agreement.

A: Er, in fact you was the one who asked for the three drawings, who asked for the valuation.

Q: I put it to you the three drawing was in 2005, correct, and this one was in 2006.

A: Yes.

Q: That was for my valuation purpose only.

A: Yes, it was the three drawings that you requested for valuation to buy the property.

Q: Yes, at that time I trusted you because our relationship is very cordial and I didn't realise you are such a, you know, person.

A: Let – let me finish saying. Then you carry on. It was you who requested for the three drawings that you wanted to do a valuation to purchase the property and somehow you couldn't get the loan; you abandoned the whole purchase. In fact the option to purchase was issued to you. You did not give it back to us, so how can you now say we did not issue an option to purchase?

Q: I put it to you I did not receive the option to purchase. If not, I would have activated it. And I'd like to point the Court to [the note]. If I have not activated the request to buy, why do you need to write?

A: Er, for your information, this is actually a domestic or rather internal communication to which you have no privilege. Very unfortunately –

Q: No –

A: – this letter was faxed to you and it wasn't even said "faxed to you". It just said pending, that's all. It was not faxed to you at all, just that my office go and make a mistake and faxed it to you.

Q: Mm.

A: So you cannot use it as a bullet to fire us.

There was no re-examination of Mr Lim on this point.

17 There is also some correspondence indicating that Mr Shiok was in arrears of his rent payments at this point in time, although it seemed that he subsequently paid up.

18 In any event, the parties signed a second tenancy agreement sometime in March 2007 ("the second tenancy agreement") for a two year term. The term began retrospectively from 1 January 2007 and continued to 31 December 2008. The rent remained at $3,200 a month. Clause 2(f)(iii) of the second tenancy agreement provided that Mr Shiok shall: [note: 18]

> During the currency of this tenancy, to allow the Landlord or its representatives at all reasonable times to bring any interested parties to view the said premises in the event of a prospective sale thereof. The said premises shall be sold subject to this tenancy.

Clause 4(i) of the second tenancy agreement provided that: [note: 19]

> During the term of the Tenancy, THE LANDLORD agrees not to sell THE SAID PREMISES to any purchasers other than THE TENANT at the sale price which will be determined after the CSC.

While it is not relevant to any issue before me, I note that the plaintiff appeared to have dated its copy of the second tenancy agreement unilaterally as Mr Shiok's copy is undated.

19 In his AEIC, Mr Lim deposed that clause 4(i) of the second tenancy agreement (which he also characterised as a right of pre-emption) differed from clause 3(d) of the first tenancy agreement because of worries that the issues surrounding the construction of the mezzanine floor will delay the application for the Certificate of Statutory Completion ("CSC") and render the plaintiff liable for liquidated damages to a purchaser.

20 It is significant to note that Mr Lim claimed that this worry arose on or before November 2006 when the application for the CSC was submitted. This was materially different from his evidence in cross-examination that he only knew about the mezzanine floor in April 2007 (see *supra*[11]). It is also pertinent to note that Mr Lim's explanation is not congruent with his position in his AEIC that there was only a right of pre-emption between the parties – if this was so, whether or not the unit was sold would be entirely in the power of the plaintiff.

21 For his part, Mr Shiok claimed that he entered into the second tenancy agreement because he had no choice: [note: 20]

> Court: ... Let me ask you a simple question. Whatever your understanding –
>
> Shiok: Yes.
>
> Court: – the language in the tenancy agreement, the first one and the second one, say what they say, okay? So if you have an understanding. You say, "Oh I think the 3.2 – 3d) in the first agreement have been taken out and repeated in the new tenancy agreement". It is not?
>
> Shiok: It is not, yes.
>
> Court: Okay. So how come – what is your understanding? You're saying this agreement don't matter? This is my understanding and this you agree? That – is that what you're saying?
>
> Shiok: No, my understanding was that that's why there was a delay of 3 months because I – I do not agree to his new second tenancy agreement.
>
> Court: But finally you signed it?

Shiok: Yes, that's because, er, I'm forced to sign. And, er, in fact was written in my – written in my affidavit – in one of my affidavits that was submitted. And I can point it out to the Court, mm.

Thio: No, we've seen – we – we – you've already mentioned it, Mr – and Mr Shiok, you can –

Court: He already said "I'm forced to sign". Is that – is that what you mean by duress?

Shiok: Yes. It is like putting a – putting a throat to – to – putting a knife to my throat and, you know, "If you don't sign, we will chase you out."

Thio: But let me just –

Shiok: And that – that is a – is a distress to me. And, er, I – I – I have choice because my investment is so high and, er, you know, how to – what shall I do. And it's not said I – I immediately January I signed because I'm still willing and still able to purchase the unit at that time. And I need the purchase S&P agreement and he refused to put the price. And the only reason was the CSC application but to me, I believe him at that time but when I saw the tenancy agreement, I – I entirely don't believe this person. And then the words he – he promised to have a management meeting and, you know, come back to me and ask me to wait and after –

Thio: Okay.

It was also suggested to Mr Shiok that he could not have activated the option because he was not able to pay the purchase price. An Enhanced Individual Search was adduced showing a number of bankruptcy applications against him. Mr Thio relied particularly on a suit brought in 2007 by Hitachi Capital Singapore Pte Ltd for $168,787.00. The suit has not been discontinued. But the search showed that no action has been taken since 2007. In the circumstances, the Enhanced Individual Search does not establish whether or not he was in a position to pay the purchase price.

22 Notwithstanding his allegation of duress, Mr Shiok also at one point seemed to say that he accepted the second tenancy agreement: [note: 21]

Q: But if you intend to purchase the unit –

A: Yah.

Q: – you can tell Mr Lim, "Oh, Mr Lim, does not worry about rent. I'm just going to buy the unit. Then it will – it's mine, I don't have to pay you anymore rent." Why didn't you say that?

A: Yah, I already say that to Mr Lim and –

Q: Why didn't you say this in writing?

A: – to – for him to give me the S&P also. And this is only a proposal. It's not a – it's not, er, something like, you know, an insistent. It's – I'm just proposing, "If, okay, and let's" –

Q: Yes.

A: The situation is this way: If it's okay –

Q: Mr Shiok –

A: No, no, I just put the – this, er, way of, er, explanation to you at that time of situation. If it's okay the rent at 3,200 and there's no much change on the tenancy agreement and the price they want to maintain, you know, I – I might go for the tenancy agreement. This is my – my –

Q: Oh, so if the price didn't change –

A: Yes.

Q: – you might go for the tenancy agreement.

A: Yes.

Q: You might not exercise your –

A: Yes, I might not.

Q: – option to purchase, is it?

A: Yes, yes.

Q: Is that what you are saying?

A: Yes.

Subsequent events

23 Subsequently, matters deteriorated further. Mr Shiok refused to remove the mezzanine floor and to pay rent. The plaintiff sought to evict him and remove the mezzanine floor. As mentioned (see *supra*[7]), Judith Prakash J allowed the plaintiff to remove the mezzanine floor, and this was accomplished on 29-30 January 2010. Mr Shiok was very badly affected by this turn of events. The conduct of his business was substantially impaired with the demolition of the mezzanine floor and has now ceased. He is now in poor financial straits and is facing bankruptcy. During the trial, he was visibly stirred when he cross-examined Mr Lim, and clearly felt himself to have been victimised. In fact, he had to be hospitalised after the second day of the trial, which caused the trial to be delayed for 3 months.

Analysis

24 The formal terms of both tenancy agreements have ended. Hence, unless Mr Shiok is able to establish some other right to possession of the unit, he must surrender possession to the plaintiff.

Contract

25 Mr Shiok's first argument was founded on contract - specifically, that he had a contractual option to purchase pursuant to clause 3(d) of the first tenancy agreement.

26 On its face, clause 3(d) only granted a right of pre-emption. For present purposes that is significantly different from an option to purchase because the plaintiff has not made any offer to sell the unit. There was no way in which the words in clause 3(d) could have been construed as

amounting to the grant of an option. However, Mr Lim's evidence on the stand strongly indicated that the parties' understanding was that an option to purchase was granted. This is fortified by the fact that Mr Shiok spent six months and over $100,000 for Heng Loong to renovate the unit. This amounted to a quarter of the term of the first tenancy agreement and over thirty times the monthly rent, and it is very doubtful that he would have done so if there was not some understanding between the parties that he could purchase the unit. On this basis, I would have granted rectification of clause 3(d) but for the fact that both Mr Shiok and Mr Lim also seem to accept, rather confusingly, that clause 3(d) correctly captured the contractual agreement between them. In the absence of a mistake as to the language used, rectification is not possible.

Proprietary estoppel

27 Mr Shiok's next argument was proprietary estoppel. For present purposes, the general elements of proprietary estoppel are sufficiently stated by Sundaresh Menon JC in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [170]: there must be a representation concerning a right or interest in land by the party against whom the estoppel is sought to be raised, and reliance and detriment on the part of the party seeking to raise the estoppel.

28 The unique feature of this case is that the proprietary estoppel is said to exist *alongside* formal contractual arrangements, *viz*, the two tenancy agreements. As a matter of principle, I do not think that proprietary estoppel is necessarily precluded by the existence of a formal contract between the parties, whether the contract was entered into prior to, contemporaneous with, or subsequent to the representation which is said to have given rise to the estoppel. Of course, the existence of a formal contract is an important fact to be considered in determining whether an estoppel has arisen. For example, a prior or contemporaneous contract may give rise to an inference that the representation which was not reduced into contract was not, when objectively viewed, intended to be relied upon. A subsequent contract, where the parties redefine their previously informal relationship, may lead to the conclusion that the equity raised by the estoppel has been displaced by the subsequent agreement of the parties. There are other possibilities, and everything depends on the facts of each case. The overarching inquiry remains, as Oliver J put it in his influential restatement in *Taylors Fashions Ltd v Liverpool Victoria Trustees Co Ltd* [1982] 1 QB 133 at 151–152, "whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment".

29 On the evidence, I find that Mr Lim must have represented to Mr Shiok, at the time the first tenancy agreement was signed, that he could buy the unit at some point in time. Otherwise Mr Shiok would not have invested so much into the unit. The renovation by Heng Loong alone cost over $100,000 and took six months. This expenditure in terms of money and time could not have been justified on the formal terms of the first tenancy agreement which lasted two years and for which Mr Shiok was willing to pay $3,200 a month. For the same reason, I find that the representation cannot be intended to be subsumed *within* the first agreement. In particular, the first tenancy agreement's duration of two years shows that it must have existed as an understanding between the parties *alongside* their contractual arrangements. I find additional support for this conclusion in the note scribbled by Mr Lim on Mr Shiok's letter of 27 November 2006 (see *supra*[16]), stating that a sale might be delayed to September 2007 pending the issuance of the CSC. The note may well be an internal note, as Mr Lim claimed. However, its existence indicated that the possibility of a sale to Mr Shiok, albeit outside the terms of the first tenancy agreement, was very much on the mind of Mr Lim. Otherwise, there seemed no reason why the note would be scribbled on Mr Lim's letter, as opposed to some other place.

30 I therefore find, on the basis of the parties' dealings during the first tenancy agreement, that

Mr Lim had represented to Mr Shiok that he could buy the unit. And in material and detrimental reliance thereon, Mr Shiok entered into the first tenancy agreement, renovated the unit and built the mezzanine floor. Admittedly, the *precise* terms of the representation cannot be established on the evidence before me. But that in itself is not a problem given that I am satisfied that some representation must have been made. The equity arising from proprietary estoppel "need not fail merely on the ground that the interest to be secured has not been expressly indicated": *Plimmer and another v The Mayor, Councillors, and Citizens of the City of Wellington* (1884) 9 App Cas 699 at 713. Given my findings, and since Mr Lim was acting on behalf of the plaintiff, a proprietary estoppel was therefore raised against the plaintiff.

31 The next question is the effect of the second tenancy agreement and the events surrounding it. Here the evidence is rather sketchy and inconclusive. As mentioned, there is no documentary evidence that Mr Shiok attempted to buy the unit. On the other hand, it appears that some parts of the parties' dealings were undocumented or at least not presented to the court. For example, there is no documentary evidence supporting Mr Lim's testimony that an option was presented at some point in time to Mr Shiok. There is also no evidence with respect to the parties' discussions on the second tenancy agreement. As for the second tenancy agreement, I do not think that Mr Shiok was compelled by economic duress to enter into it such that it could be set aside. As mentioned (see *supra*[22]), Mr Shiok showed that he was willing to accept the second tenancy agreement as a substitute for an outright purchase. Also, as Mr Thio pointed out, duress was not pleaded. At the same time, however, it seemed clear that entering into the agreement was not a clear cut decision for both parties, given the three month delay between the expiry of the first tenancy agreement in December 2006 and the signing of the second tenancy agreement in March 2007. I do not think that the difficulties which must have been faced by the parties in negotiating a new agreement were entirely attributable to Mr Shiok's failure to pay rent in December 2006 , January and February2007. The arrears seemed to have ceased after that, and I infer that they were a consequence, rather than a cause, of the difficulties faced by the parties going forward. On balance, I would accept Mr Shiok's evidence that he felt constrained to some extent by the investment he already put into the unit.

32 In all these circumstances, I cannot unequivocally conclude that the mere entering into the second tenancy agreement can be regarded as wholly satisfying or displacing the equity raised by the estoppel. The just and correct approach would be to consider all these circumstances in satisfying the equity raised by the initial estoppel, bearing in mind that "[h]ere equity is displayed at its most flexible": *per* Lord Denning MR in *Crabb v Arun District Council* [1976] 1 Ch 179 at 189.

33 On the facts, I think an outright order to sell the unit to Mr Shiok is out of the question. Mr Shiok seemed to be in no position to buy the unit although he gave evidence of unnamed persons who were willing to back him up. In my view, the better and more precise remedy is an award of damages to put into Mr Shiok into the position he would be in had he not entered into the two tenancy agreements. This would reverse any detriment he has suffered, as well as take into account any benefit he had enjoyed as a result of entering into the tenancy agreements. I should add that, on assessment, if Mr Shiok was in fact better off after the two tenancy agreements, then he would have suffered no detriment, and justice would have been served.

34 As a corollary that damages are the appropriate remedy, Mr Shiok has no right to continue in the premises after the expiry of the second tenancy agreement.

The mezzanine floor

35 The mezzanine floor issue is relevant for deciding whether the second tenancy agreement was rightfully terminated. However, it does not affect the overall proprietary estoppel analysis and it is

thus not necessary for me to decide the point. It is sufficient for me to observe that the plaintiff, Heng Loong and Mr Lim (who was the agent of both the plaintiff and Heng Loong) do not seem to have conducted themselves in a way that was beyond reproach in their dealings with Mr Shiok.

Conclusion

36 I therefore give judgment in the following terms:

(a) If he has not already done so, Mr Shiok is to vacate the unit within six weeks of this judgment, failing which he is to pay the plaintiff rent at the rate of $6,400 a month, pro-rated accordingly.

(b) Mr Shiok is entitled to damages to be assessed to restore him to the position he would be in had he not entered into the two tenancy agreements. The registrar is to assess the totality of rental, renovations and mezzanine floor payments made by him against the totality of benefits received by him in connection with the first tenancy until the date of vacation of the premises. Subject to this overriding aim, the assessing registrar should consider, *inter alia*, the amount of money Mr Shiok spent on renovating and improving the unit, including the building and removal of the mezzanine floor and the profits from his business conducted therein. I appreciate that a precise measure would not be possible – any evidential difficulties should be resolved in an equitable manner and in the spirit of my judgment.

(c) The parties are at liberty to clarify the terms of my orders above, and to apply for any ancillary order to give effect to my judgment.

37 Mr Shiok is entitled to his costs of the trial. The costs of the assessment are reserved to the registrar, who will also decide on interest.

[note: 1] Defendant's Bundle of Documents ("DBD") p 14

[note: 2] Notes of Evidence ("NE"), 21 January 2010, p 12

[note: 3] NE, 21 January 2010, p 23

[note: 4] NE, 26 April 2010, p 9

[note: 5] NE, 26 April 2010, p 52

[note: 6] NE, 26 April 2010, p 57

[note: 7] See the Bundle of Quotation and Invoices

[note: 8] NE, 27 April 2010, p 73

[note: 9] NE, 26 April 2010, pp 14-15

[note: 10] NE, 26 April 2010, p 20

[note: 11] NE, 26 April 2010, p 22

[note: 12] NE, 26 April 2010, pp 34-35

[note: 13] PBD, p 34

[note: 14] DBD, p 165

[note: 15] Plaintiff's Bundle of Documents ("PBD"), p 32

[note: 16] PBD, p 33

[note: 17] NE, 26 April 2010, p 36

[note: 18] PBD, p 38

[note: 19] PDB, p 42

[note: 20] NE, 26 April 2010, p 74

[note: 21] NE, 26 April 2010, p 87