IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1986] SGHC 54

OS 1254/1986

Between

Interocean Properties Pte Ltd

… *Plaintiff*

And

Swansea Investments Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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Interocean Properties Pte Ltd v Swansea Investments Pte Ltd

[1986] SGHC 54

OS 1254/1986
Chan Sek Keong JC
30 December 1986

1) This is an unusually bold action commenced by way of originating summons by the plaintiffs against the defendants for a declaration that the premises known as *1,* Emerald Hill, Singapore, owned by the plaintiffs and agreed to be let out to the defendants are not subject to the Control of Rent Act on the ground that the premises have been redeveloped to such an extent that they were new premises.

2) When the action first came before me for hearing on November 28, 1986, Miss Koh appeared for the plaintiffs, but the defendants were not represented by counsel although they had been duly served. I then indicated to counsel that I was not prepared to grant a declaration by consent and that as the premises were originally subject to the Control of Rent Act, I required further arguments on whether the court should exercise its discretion to grant the declaration in the circumstances of this case.

3) On resumption of hearing, Mr Kaan appeared with Miss Koh for the plaintiffs but the defendants were again not represented. Before I deal with the submissions of counsel, I should first outline the material facts as disclosed in

the affidavits of one Loh Tsu Sin, a director of the plaintiffs, affirmed on November 4, 1986 and November 22, 1986:-

The plaintiffs purchased the premises in September 1983 from the previous owners with vacant possession with the intention of redeveloping the premises as commercial premises. At the time of the purchase, the premises consisted of a traditional two-storey terrace shophouse-cum-dwelling unit and was zoned for "Main Shopping" use on the Master Plan. The plaintiffs were given to understand that prior to the sale thereof, the premises were occupied as domestic premises on the first storey and as business premises on the first floor. The plaintiffs do not dispute that prior to the redevelopment the premises were subject to the Control of Rent Act.

4) The plaintiffs obtained the necessary approvals from the competent authorities for the redevelopment of the premises. Works began in October 1985 and by October 23, 1986 were "practically completed". The plaintiffs say that the redevelopment works which are expected to cost $150,000 were not in the nature of minor renovations and repairs but involved fundamental alterations and changes to the structure and fabric of the premises of such extent that, upon the completion of works, the shophouse would be substantially and materially a new building. The major alterations are described as follows:

"(i) Converted from residential usage the front two thirds of the second storey into an ancilliary office (to the restaurant on the ground floor), a new fire escape installed.

(ii) The attic or loft in the peak of the roof over the forward part of the building sealed off (in accordance with the requirements of the competent authorities) and the access staircase to the attic or loft removed,

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(iii) Non-combustible ceiling installed over the forward part of the building."

5) The plaintiffs say that they carried out the said works instead of demolishing the existing buiding and erecting a new building because the exterior facade was required to be retained by the Preservation of Monuments Board.

6) The building plans and the photographs of the premises as redeveloped up to November 1986 were exhibited to the said affidavits and showed that the alteration and renovation works were very extensive.

7) In the course of the redeveloping of the premises, the plaintiffs, like any prudent business enterprise, entered into a tenancy agreement with a company called Swansea Investments Pte Ltd. The tenancy agreement is dated April 4, 1986 and provides for a tenancy of 5 years at the monthly rent of $4,830 for the first two years, $7,080 per month for the third year and the rent for the last two years to be revised on the basis of a fair market rental but not exceeding $11,250 per month. Under clause 2 of the tenancy agreement, vacant possession of the premises was agreed to be given on March 31, 1986 but the tenancy would only commence on the occurrence of all the following events:

(a) the endorsement of building plans by the Building Control Division in recognition that the alteration and renovation works have been completed;

(b) the Tenant obtaining the liquor licence for the said premises;

(c) Public Utility Board services being installed in the said premises

provided that if the tenant should occupy the premises for business prior to June 1, 1986, then the tenancy would commence from that date and provided further that:

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"if the aforesaid conditions in this clause shall not be complied with by the 1st day of June 1986 then the Tenant shall not be complied ith by the 1st day of June 1986 then the Tenant shall elect by the 10th day of June 1986 (time being of the essence) as to whether the tenancy herein shall commence from the 1st day of June 1986 or whether to declare this Agreement to be null and void in which event the Landload shall refund to the Tenant all monies and deposits paid by the Tenant and neither party shall have any further claims against the other."

8) Clause 5(e) of the tenancy agreement provides as follows:

"In view of the extensive renovation works done or to be done by the Landlord to the said premises and further in view of the fact that the said premises were previously used as" domestic premises and that the Landlord had obtained vacant possession of the same the Tenant confirms that the said premises are not controlled premises within the meaning of the Control of Rent Act, Singapore."

9) By another agreement dated April 4, 1986 between the same parties, the defendants inter alia acknowledged that the plaintiffs had expended $150,000 in renovating the premises and agreed to reimburse the plaintiffs the said amount of $150,000 without interest in monthly instalments of $4,170.

10) The defendants entered into possession of the premises on April 9, 1986 but there is no evidence on record that the tenancy has commenced and counsel admitted that he did not know whether the tenancy had commenced in terms of the tenancy agreement.

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11) Then, on September 6, 1986, the plaintiffs granted an option to one Lee Thor Seng and/or Nominee to purchase the property at the price of $1,000,000, "free from encumbrances and with vacant possession in respect of the 2nd and 3rd storey but subject to tenancy in respect of the 1st storey, a copy of which tenancy agreement is annexed hereto". Completion was agreed to take place within ten weeks from the date of acceptance of the option by the purchaser. On September 22, 1986, a company called Cheng Keng Lee & Co Ltd exercised the option and accepted the offer and paid the usual 10% deposit towards the purchase price.

12) On October 23, 1986, these proceedings were commenced against the tenants as defendants.

13) On these facts and statements, counsel for the plaintiffs submitted that the plaintiffs were entitled to the declaration that the premises were not a new building for the purposes of the Control of Rent Act. In relation to the effect of the alterations and renovation works, he referred me to the Privy Council decision in Bank Negara Indonesia v Philip Hoaliro 1973 2 MLJ 3 where a building, after certain alterations and renovations was held to have been converted into a new building outside the purview of the Control of Rent Act. In view of the order I have decided to make on his application, it is unnecessary for me to decide whether the premises at the date of the application were or at the present are a new building for the purpose of the Control of Rent Act.

14) On the court's power to grant a declaration, counsel however conceded that in principle declarations should not be granted by consent of the parties or on an issue raised in the pleadings which has been admitted by both parties and has not been argued out before the court: see Metzger v Department of Health 1977 3 All ER444. He also conceded that the court has no power to grant a consent

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declaratory judgment having the effect of "decontrolling" a property otherwise subject to the Control of Rent Act. However counsel submitted that the present case was not one where the parties had consented to the declaration but a case where the defendants were in default and that the court had the power to and should exercise its discretion to grant the declaration in terms of the summons. He submitted that the hearing before me was a trial in which full evidence has been adduced by the plaintiffs and that there was material before the court to enable the court to perform a judicial act by making the declaration; and that otherwise, if a defendant chose not to appear on the hearing of the dispute, the plaintiffs would be left without any remedy and that would cause an injustice to them. He referred to the statement of Scarman L.J. in Wallersteiner v Moir 1974 3 A11 E.R. 217 at page 253 when his Lordship said:

"The power of the court to give declaratory relief on a default of pleading, of course, exists, but, for the reason crystallised by Horace in those four words of his, [nescit vox missa reverti] should be exercised only in cases in which to deny it would be to impose injustice on the claimant."

He further submitted that any person is entitled to come to court for declaratory relief in respect of his status as well as his private rights and he gave the following examples where the courts have granted such relief: (a) Ankerson v Connelly 1906 2 Ch. 544 (declaration that plaintiffs entitled to easement of light and air); Re Lewis's Declaration of Trust 1953 1 Ch.D. 1005 (declaration that defendant had no interest in certain investments); Vine v National Dock Labour Board 1956 3 All E.R. 939 (declaration that plaintiff was wrongfully dismissed); Grant v Kanaresborough UDC 1928 1 Ch.310 (declaration that form of return requiredd by valuation authority was invalid). It should however be noted that all these decisions were in respect of bona fide disputes where both parties were before the courts.

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15) It cannot be that the Court has the power to make declarations upon the default of the defendant, in default appearance or in filing a pleading or in defending it at the trial itself. This power exists but it has to be exercised with caution where "the case seeks of the odour of suspicion". It should be exercised only where "justice to the claimant only be met by so doing": can only be met by so doing": see Buckley L.J. in Wallersteiner v Moir (at page 252). In an appropriate case, a declaration may be granted even where the subject mater concerns rent controlled premises. In Thorne v Smith 1947 1 K.B. 307, Bucknill L.J. said:

"Before making an order for possession the judge is under a duty to satisfy himself as to the truth if there be a dispute between landlord and tenant, but if the tenant in effect agrees that the landlord has a good claim to an order under the Acts, I think the judge has jurisdiction to make the order for possession under the Act without further inquiry. For these reasons the appeal, in my view, should be allowed."

16) As to counsel's submission that the proceedings were not consent proceedings, I do not disagree that in form they appear not to be so. He also submitted that this was a hearing under Order 28 rule 2 at which the plaintiffs were required to and have adduced evidence by affidavit and that such evidence was sufficient to prove their case. Again, I also do not disgree that in form there was compliance with this rule. But I cannot shut my eyes to the real purpose of these proceedings. It is clear to me that the defendants have been joined as defendants for the sole purpose of obtaining a declaration which would enable the plaintiffs to complete or at least facilitate the completion of the sale of the premises to Ching Keng Lee & Co. Ltd. My reasons for coming to this conclusion are as follows: (a) the defendants have admitted that the alterations and renovations of the premises have changed the premises into a new building

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not subject to the Control of Rent Act; (b) there is is no evidence that the defendants have resiled from this admission or have indicated their refusal to pay the contractual rent; (c) on the date of commencement of these proceedings, the alterations and renovations have not been completed; (d) there is no evidence that the tenancy agreement has taken effect in terms of the tenancy agreement; (e) the sale is subject to the tenancy agreement of the defendants; (f) the date fixed for completion of the sale of the premises was December 8, 1986.

17) All the above considerations point to litigation by consent in the the guise of litigation from dissent.

18) It should also be noted that this action is not an action for recovery of arrears of rent or possession, which would be the normal reliefs in disputes relating to premises which may or may not be subject to the Control of Rent Act but an action for a declaration that the premises in question are not subject to the said Act. If the action had been for either of the normal reliefs, it would clearly have been premature when, as here, on the facts, and it was not the less premature when it was, clothed in the form of such a declaration.

19) In Re Clay 1919 1 Ch 66, the plaintiffs sought to obtain the decision of the Court as to whether they were liable under a deed of indemnity to the defendant. No question of construction arose and the defendant had, in fact, made no claim, although he had reserved his rights, whatever they might be. The Court of Appeal held that the court had no jurisdiction to make a declaratory order against a person who had asserted no specific right nor formulated any claim. Similarly in Re Barnato 1949 Ch.258, where the trustees, who desired to make a further advancement to a child but were fearful of the tax consequences if a certain future event were to occur, joined the Commissioner of Revenue as a defendant in order to determine the question of tax laibility. The Commissioner

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applied to the Court to be struck out as as having been in improperly joined. The Court of Appeal made the order on the ground that the proceedings raised only a hypothetical question that might never arise, there being no jurisdiction in the court to make a declaration in respect to such a matter.

20) To summarise the position in this case, if the defendants were joined as parties with their prior consent, this action would amount to a consent action; if not so joined, there was no lis. The law is that in neither of the above situations will a court grant declaratory relief.

21) As to the submission that denial of the declaratory relief sought would be a grave injustice to the plaintiffs as they would be left without any other relief, I am of the view that, as the defendants have asserted no rights, the plaintiffs do not need any relief. No injustice would be done to them. The declaration, if granted might assist the plaintiffs in completing the sale of the premises as decontrolled premises to the purchasers. But it might not, if the purchasers were not satisfied with its validity. Therefore, the declaration might serve no purpose at all. No court acts in vain. This is another reason for not exercising the court's discretion to grant the declaration. If, as the plaintiffs have asserted, that the premises, as a result of the alterations and renovations, had become at the commenceroent of this action or are now a new building for the purpose of the Control of Rent Act, they do not need a declaratory order to satisfy the condition of sale that the premises are outside the Control of Rent Act. If the purchasers were to refuse to complete, the plaintiffs would be entitled to force the sale on the purchasers by commencing proceedings for specific performance. Also, there would then be a genuine dispute between genuine parties. In truth, the plaintiffs are not without any remedy which will give them the justice they deserve.

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22) The application is accordingly dismissed.

Chan Sek Keong JC

Kaan (with Koh) for Plaintiff
Defendant not represented

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