

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1987] SGCA 7

CA 59/1984

Between

Tiger Properties Pte Ltd

... Appellant

And

Haw Par Properties
(Singapore) Pte Ltd

... Respondent

GROUND OF DECISION

Revenue Law — Property tax; Words and Phrases

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Tiger Properties Pte Ltd v Haw Par Properties (Singapore) Pte Ltd

[1987] SGCA 7

CA 59/1984

Punch Coomaraswamy J; L P Thean J; Wee Chong Jin CJ

27 March 1987

1 Cur Adv Vult

2 (delivering the judgment of the court): By four separate agreements, all dated 8 September 1979 the appellants agreed to lease to the respondents respectively four floors, namely, the third to the sixth floors, of a newly-erected building called Tong Building, 302 Orchard Road for a term of ten years, commencing from 15 May 1979. The rent payable for each floor is \$10,290 per month, calculated at the rate of \$1.50 per square foot, inclusive of service charge. Each of the agreements by cl 2(3) thereof contains an undertaking by the respondents in the following terms:

To pay on demand any increase in the property tax over and above the amount of property tax payable by the Landlord on the first assessment of the demised premises whether such increase is due to an increase in the annual value of the demised premises and or an increase in the rate of property tax payable.

3 On or about 10 August 1982 the Property Tax Division of the Inland Revenue Department served on the appellants, who are the owners of Tong Building, two notices, namely:

(a) a notice dated 10 August 1982 under s 18(2) of the Property Tax Act (Cap 144) (the Act) stating that it was proposed to amend the Valuation List 1982 by increasing the annual value of Tong Building to \$4,962,000 with effect from 1 January 1982;

(b) a notice also dated 10 August 1982 under s 19A(1) of the Act stating that upon the authentication of the annual value as proposed in the notice under s 18(2) of the Act, the property tax of Tong Building for the period from 21 April 1979 to 31 December 1981 would be in the sum of \$2,096,666.25.

4 The notice under s 18(2) was issued by the Chief Assessor and the notice under s 19A(1) was issued by the Comptroller of Property Tax. Accompanying the two notices is a letter from the Comptroller of Property Tax explaining that the notices under ss 18(2) and 19A(1) were issued for the reason that Tong Building was a new building and setting out a breakdown of the sum of \$2,960,666.25 which is as follows:

For Period Amount Due

21 April 1979 - 31 December 1979

(AV \$2 m @ 33%) \$458,333.33

1 January 1980 - 31 December 1980

(AV \$2 m @ 31%) \$620,000

1 January 1981 - 11 August 1981

(AV \$2,800,000 @ 28%) \$480,516.12

12 August 1981 - 31 December 1981

(AV \$4,962,000 @ 28%) \$537,816.80 \$2,096,666.25

1 January 1982 - 31 December 1982

(AV \$4,962,000 @ 26%) \$1,290,120

\$3,386,786.25

5 Arising from the two notices, the appellants claimed that there was an increase of property tax over and above the amount of property tax payable by the appellants `on the first assessment of the demised premises`, and by their letter of 29 June 1983 they computed a sum of \$444,354 as representing such increase of property tax of the demised premises as payable by the respondents. This was disputed by the respondents, whereupon the appellants took out an originating summons seeking a declaration in the following terms:

(1) a declaration that there are or have been increases in property tax over and above the amount of property tax payable by the Landlord on the first assessment of the demised premises.

6 The application was heard by Abdul Wahab Ghows J who dismissed it on the ground that the first assessment of the demised premises was the assessment of annual value set out in the Chief Assessor`s notice dated 10 August 1982 under s 18(2) of the Act and in consequence there was no increase in property tax payable by the respondents. Against that decision this appeal is brought.

7 It is common ground that at the time when the agreements for leases were made, Tong Building was a newly-erected building and that the two notices were the first notices issued under the respective sections since the completion of the building, and prior to 21 April 1979 the property was assessed to tax on the basis of vacant land. Apart from lodging their objections to the assessment of annual value and property tax proposed in the two notices - presumably the objection to the annual value was made under s 18(3) and the objection to the property tax was made under s 19A(2) - which objections, however, were rejected, the appellants did not appear to have contested the legality or validity of these notices. Hence, both the notices stand as valid, and for the purpose of this appeal they are treated as valid.

8 This appeal turns on (i) the construction of cl 2(3) of the agreements for leases and, in particular, the words, 'first assessment of the demised premises', and (ii) the question whether on the material before us there has been an increase in the property tax over and above the property tax payable by the appellants on the first assessment of the demised premises. On the issue of construction, it is necessary to consider first the meaning of the word 'assessment'. In relation to property tax, that word is capable of two meanings, depending on the context in which it is used: it can mean an assessment of the annual value of a property for the purpose of property tax or it can mean an assessment of property tax payable on the property. In so far as cl 2(3) is concerned, it is clear that read in the context of that clause and, in particular, having regard to the immediately preceding words, 'property tax payable by the landlord', the word 'assessment' means an assessment of property tax payable. If this is the meaning of the word, 'assessment', as in our opinion it is, then the notice which we have to consider is that issued by the Comptroller of Property Tax under s 19A(1) of the Act, read together with the accompanying letter which explained how the total amount of property tax of \$2,960,666.25 was arrived at. Reading these two documents together, it is clear that property tax for the building was assessed as follows:

- (a) \$458,333.33 for the period 21 April 1979 to 31 December 1979;
- (b) \$620,000 for the period 1 January 1980 to 31 December 1980;
- (c) \$480,516.12 for the period 1 January 1981 to 11 August 1981; and
- (d) \$537,816.80 for the period 12 August 1981 to 31 December 1981;

9 and it is also clear that the assessment of property tax amounting to \$458,333.33 for the period 21 April 1979 to 31 December 1979 was the first assessment of property tax payable.

10 The next question is whether this first assessment was a first assessment of the demised premises. It is contended on behalf of the respondents that in each of the agreements the demised premises have been specifically described in the Schedule thereto, and that so described the demised premises means the particular floor of the building. The assessment relied upon by the appellants is an assessment of Tong Building as a whole and not specifically of the demised premises. In our opinion the respondents' argument is unsustainable.

11 In construing this clause, the court must 'place itself in thought in the same factual matrix as that in which the parties were' at the time the agreements for leases were made. Both the appellants, as the landlords, and the respondents, as the tenants, must have appreciated at the time that Tong Building, being a building then just completed or substantially completed, would be assessed as a building for property tax; that until then the property was assessed as vacant land for property tax, and that the demised premises being a part of the building would have to bear a proportionate part of the property tax attributable to them. In agreeing to the rent at \$1.50 per square foot per month both parties must or would have appreciated that the Chief Assessor would take this rental into consideration in assessing the annual value of the building and, in particular, the floors in question - the third to the sixth floors - and that the rent they agreed upon would have to include an element of property tax to be assessed. The parties would also have foreseen that subsequently after the first assessment, there would or might be increases in the property tax, bearing in mind that the leases are for a term of ten years; naturally the landlords would have to ensure that the profit element in their rent, based on their calculation then arrived at,

would not be eroded in the future by such increases, and it must have been contemplated by both that these increases would be borne by the tenants. It seems to us clear that the intention of the parties was:

- (a) that the first assessment of the property tax payable on the demised premises, after the agreements for leases, would be borne by the landlords, and
- (b) that thereafter any increase in property tax over and above this first assessment would be borne by the tenants,

12 and cl 2(3) was drafted precisely to give effect to this intention; unfortunately as it turns out the words used are far from being precise. The assessment made in this case is an assessment of Tong Building of which the demised premises form a part, and such assessment of Tong Building includes an assessment of the demised premises and therefore falls within the purview of this clause. Construed in this way, the clause will give effect to the intention of the parties. In this connection, the following passage from para 766 of Vol 1 of *Chitty on Contracts* is apposite: <6> ***Intention of the parties.*** The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say, the meaning of the document or of a particular part of it is to be sought in the document itself: `One must consider the meaning of the words used, not what one may guess to be the intention of the parties.` However, no contract is made in a vacuum. In construing the document, the court must therefore always have regard to its commercial purpose and the factual background against which it was made.

Further, the law does not approach the task of construction with too nice a concentration on individual words. `The common and universal principle ought to be applied: namely, that [an agreement] ought to receive that construction which its language will admit, and which will best effectuate the intention of the parties, to be collected from the whole of the agreement, and that greater regard is to be had to the clear intention of the parties

than to any particular words which they may have used in the expression of their intent.

13 If the expression, 'first assessment of the demised premises', is construed so restrictively contended by the respondents, then cl 2(3) will become functionless. An examination of the Act will demonstrate this conclusion. Under s 9(1) of the Act, the Chief Assessor prepares a Valuation List of all houses, buildings and tenements, and the Valuation List contains, inter alia, a description or designation sufficient for identification, the name of the owner and the annual value ascribed thereto. Under s 9(3) each part of a building divided laterally or horizontally into parts in such a manner that the owner, either solely or jointly with other owners, of one part is not also the owner, either solely or jointly with the same other owners respectively of any other part, then each part is deemed to be a building. Further, under s 9(4) each part of a partially completed building, divided laterally or horizontally into parts is deemed to be a building if it is used for human habitation or otherwise. Upon the Valuation List of a building being authenticated under the Act, property tax is then assessed on the building based on the annual value thereof. Hence, only in two cases as stated in sub-ss (3) and (4) of s 9 of the Act can there be an assessment of property tax on a part of a building. Neither of these subsections applies to the demised premises, and accordingly, the demised premises are not a building within the meaning of the Act. Consequently, there is no provision enabling the Chief Assessor to assess the annual value of the demised premises as a building in the Valuation List and none enabling the Comptroller of Property Tax to assess the demised premises to property tax separately. Hence, both in respect of the annual value and in respect of the property tax, it is not possible under the Act to have a separate assessment of the demised premises.

14 Accordingly, a meaningful construction for the expression, `assessment of the demised premises`, ought to be adopted, and in such a situation, the principle of interpretation, *ut res magis valeat quam pereat*, is applicable. As stated in para 785 of Vol 1 of ***Chitty on Contracts*** (25th Ed): ***Saving the document***

15 . In order to give effect to the intention of the parties and to `save` the document, if possible, the court will adopt various expedients. This rule is often expressed in the phrase *ut res magis valeat quam pereat* .

16 That is to say, if by any reasonable construction the intention of the parties can be arrived at and that intention carried out consistently with the rules of law, the court will take that course. So the court will go to the trouble of reforming the document either by restricting, supplying, transposing, rejecting or modifying words or terms in the document, provided the intention of the parties is plain in spite of the words.

17 Adopting this approach, the assessment of property tax made by the Comptroller of Property Tax for the period 21 April to 31 December 1979, falls within the provisions of cl 2(3) of the agreements for leases. As we have just said, the assessment is an assessment of property tax of Tong Building of which the demised premises form a part; that assessment includes an assessment of the demised premises.

18 We now turn to the question whether there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises. This is a question of fact and a matter of computation which clearly must be based on relevant data of Tong Building. This issue, unfortunately, has not been canvassed before Abdul Wahab Ghows J or before

us; nor is there sufficient material for the learned Judge or for us to determine it. The computation as shown by the appellants in the letter dated 29 June 1983, written on their behalf is far from satisfactory and difficult to follow. In order to succeed on this issue, the appellants must show, inter alia, the following: (i) whether the annual value of Tong Building amounting to \$2 m in 1979 with effect from 21 April 1979 was made by the Chief Assessor on the basis that Tong Building at that time was a partially or wholly completed building; (ii) a breakdown of the annual value of the shop and office units respectively of Tong Building at that time; (iii) a breakdown of the annual value of the shop and office units as from 1 January 1981; (iv) whether the increase in annual value as from 1 January 1981, was due to the completion of the building or to increase in the number of shop or office units let out as from that year, or both, and (v) the reasons for the huge increase in annual value of the building as from 12 August 1981. It seems to us that the appellants must have available these data or they are obtainable by them from the Property Tax Division of the Inland Revenue Department. All these have to be adduced in order to enable the court to decide whether or not there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises.

19 In the result the appeal succeeds to the extent that the order of Abdul Wahab Ghows J is set aside and the matter is remitted to the court below to determine the issue. As for costs, having regard to all the circumstances of this case, we order each party to pay their own costs before us and before Abdul Wahab Ghows J. There will be the usual consequential order for the refund to the appellants or their solicitors of the amount deposited by the appellants as security for costs of the respondents in this appeal. **Order accordingly**

Tiger Properties Pte Ltd v Haw Par Properties (Singapore) Pte Ltd [1987] SGCA 7

Punch Coomaraswamy J
L P Thean J
Wee Chong Jin CJ

Lee Hock Seng (Ramdas & Wong) for the appellants
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respondents
