IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 102

Originating Summons No 187/91

Between

Gani Realty Pte Ltd

… *Plaintiff*

And

JIS Investment Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Gani Realty Pte Ltd v JIS Investment Pte Ltd

[1991] SGHC 102

Originating Summons No 187/91
Chao Hick Tin J
24 July 1991

1 **Judgment:**

2 Coram: Chao Hick Tin J

3 **GROUNDS OF DECISION**

4 By this originating summons the Plaintiffs seek the determination of the court as to whether the Defendants have validly exercised an option to renew a lease for a further seven years.

5 The background to the case is as follows. On 14 Oct 1987 a lease agreement was entered into between the Plaintiffs and the Defendants in respect of a 6-storey flatted factory situated at No 44 Alexandra Terrace, Singapore (hereinafter called "the premises"). The lease provides that the lessee (i.e., the Defendants) "agrees to take a lease of three(3) years commencing from 1 Dec 1987 to the 30 Nov 1990 both days inclusive" at a monthly rent of S$13,000/-. Clause 4(e) gives the Defendants an option to ask for an extension of the lease. As this provision is crucial to the present proceedings I shall set it out in full:-

6 "(e) The Lessor shall at the written request of the Lessee made not less than three (3) months before expiration of the terms hereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the stipulations on the part of the Lessee herein contained and at the Lessee's expense grant the Lessee a lease of the demised premises for and a further 2 (two) terms of 2 (two) years each and a further one term of 3 (three) years upon the terms and conditions herein and at such monthly rental as stated in the schedule below:-

7 1. The initial terms being the first 3 years from 1.12.1987 - $13,000.00 per month.

8 2. The first further term of 2 years from 1.12.1990 - $14,300.00 per month.

9 3. The second further term of 2 years from 1.12.1992 - $15,730.00 per month.

10 4. The third further term of 3 years from 1.12.1994 - $17,303.00 per month."

11 Another very relevant provision is clause 4(h) and I shall also set it all out:-

12 "(h) All notices under the Lease shall be in writing and any notice to the Leasee shall be sufficiently served if sent to them by registered post addressed to the demised premises and any notice to the Lessor shall be sufficiently served if delivered to its registered office by registered post or otherwise."

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13 The Defendants alleged that on 6 Aug 1990, more than three months before the expiry of the original 3-year term, they wrote a letter to the Plaintiffs requesting "for a further two (2) terms of two (2) years each and a further one (1) term of three years ..." The Defendants said that this written request of 6 Aug 1990 was sent to the Plaintiffs by ordinary mail. However, the Plaintiffs said that they had never received it and because no request was received, the Plaintiffs on 28 Sep 1990 wrote to the Defendants as follows:-

14 "We refer to the Lease dated 14th October 1987 made between you and us and in particular, to clause 4(e) thereof.

15 As you have not requested from us for a further grant of the demised premises within the stipulated period, the lease will expire on 30th November 1990 and be terminated.

16 Please note that you are to vacate the demised premises on or before 30th November 1990 and surrender the same to us in good order and condition and with all the keys thereto in compliance with the terms and conditions of the said lease. In this connection, we would require an inspection of the said demised premises on 30th November 1990 before the keys are handed to us. Please confirm the time convenient to you as soon as possible."

17 The Defendants contended that the Lease was effectively for ten years. They said that they took the lease of the premises when the economic condition prevailing in Singapore was not so bright. They had spent a substantial sum (more than a million dollars) in alterations and renovations. They had also applied to the proper authorities for a change of use, from light industrial factory to jewellery manufacturing, workshop and office. Because of the large capital

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outlay, they had to obtain a long lease from the Plaintiffs, with an attractive rental schedule, in order to recoup the expenses they had to incur.

18 As I see it, while what the Defendants said above are probably true, I do not think those facts are directly germane to the question whether the Defendants have validly exercised the option to renew. This essentially involves a construction of the relevant provisions of the lease.

19 The first set of issues to consider relate to clause 4(e) and clause 4(h). The Defendants argued that clause 4(e) stands on its own and that clause 4(h) is not applicable because clause 4(h) refers to "notices" whereas clause 4(e) refers to "written request". The Defendants' counsel also submitted that there is nothing in clause 4(e) which precludes acceptance of the option by ordinary post. Further, even if clause 4(h) is applicable, he contended that the expression "or otherwise" in that clause permits acceptance by ordinary post.

20 While it is true that clause 4(h) refers to "notices", it refers to "all notices under this lease." I am unable to accept the contention that the "written request" under clause 4(e) is not a notice. The very purpose of the "written request" is to give notice to the landlord that the tenant intends to exercise the option granted to the tenant to have the lease extended for the periods stated. In my opinion the only fair construction to give to the two provisions is that clause 4(h) shall be applicable to all notices, including the written request under clause 4(e). That must also have been the intention of the parties.

21 I move next to consider the scope of clause 4(h). As is clear from its wording it is not a mandatory provision. It is a deeming provision, a provision to assist the parties to prove service of notice. This comes out clearly from the words "shall be sufficiently served." If a party serves a notice by the method(s)

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set out in clause 4(h), that is good service even if the other party has not received it. If a party does not serve a notice in a manner prescribed in clause 4(h) then that party must prove that he has served the notice on the other party. In the present case it is not in dispute that the Defendants did not send the "written request" by registered post. What then is the meaning of the word "or otherwise" in the phrase "any notice to the Lessor shall be sufficiently served if delivered to its registered office by registered post or otherwise." The Defendants' counsel argued that the two words permit service by ordinary post. I do not think such a construction is warranted in the context. In my view the words "or otherwise" mean "or other means" so that the entire phrase means that it is good service if a notice is delivered to the registered office by registered post or delivered to the registered office by any other means. Without intending to be exhaustive what would be covered would be delivery by a courier, for example, somebody like DHL, or by an employee of the lessee.

22 I turn to the next argument, which is, that clause 4(e) by not providing a method of service may be construed to allow service by ordinary post. If this argument is valid it would mean that mere posting of the written request is good enough. In my opinion this must necessarily be contrary to the intention of the parties when they have agreed that only delivery to the registered address by registered post or other means would be deemed good service. With such a deeming provision, it could not be within the contemplation of the parties that posting by ordinary mail should suffice; in fact it would render the deeming provision completely otiose. Considering the lease as a whole, I hold that unless the lessee could take advantage of the deeming provision he must prove that the lessor did in fact receive the written request. I do not think it would be reasonable in a communication of this nature to infer that ordinary prudent businessmen would agree that mere posting by ordinary mail should suffice

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between the parties, bearing in mind that if the posting rule should apply it would apply both ways. It seems to me that business common sense would dictate against the posting rule here. I think this passage in para 66 in Chitty on Contract (26th Edition) on the posting rule is pertinent:-

23 "The posting rule only applies if it is reasonable to use the post. This will normally be the case if the offer itself is made by post. It may be reasonable to use the post even though the offer was made orally if immediate acceptance was not contemplated and the parties lived at a distance."

24 The affidavit evidence in this case shows that the Defendants' staff had posted the written request. However, the Plaintiffs in their affidavits have denied receiving the same. It appears to me that the written request must have gone astray in the post. The burden is on the Defendants to show that they have communicated the written request to the Plaintiffs and this they have failed to discharge. Thus the Defendants' claim that they have validly exercised the option and that they are entitled to an extension of the lease must fail.

25 The next main submission of the Defendants relates to waiver and estoppel. Before I examine this submission I ought to allude to the essential facts which give rise to this argument. On 6 Nov 1990 the Defendants' solicitors tendered two cheques, one for $7,800/- being additional deposit and the other for $42,900 being advance rent for Dec 1990 to Feb 1991. The cheques were returned on 9 Nov 1990. On 13 Dec 1990, the Defendants' solicitors re- tendered the two cheques. On 18 Dec 1990 the Plaintiffs' solicitors replied by fax to say that "since your clients have been unlawfully occupying the abovenamed premises after the tenancy agreement has expired on 30 Nov 1990 our clients will treat the cheques as your clients' payment towards account of the mesne profits ... Please note that this acceptance is entirely without prejudice

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whatsoever to our clients' rights to commence eviction proceedings against your clients." On 19 Dec 1990 the Defendants' solicitors responded to say that they were taking clients' instructions on the Plaintiffs' solicitors' fax of 18 Dec 1990 and also added:-

26 "Meanwhile no admissions were made in respect of your fax of 18.12.90 and its enclosures. Kindly note that the cheques handed to you under cover of our letter of 13.12.90 are for specific purposes and accounts stated therein and not otherwise."

27 The cheques were banked in by the Plaintiffs on 20 Dec 1990. The receipt which was eventually issued was marked "without prejudice" and described the payments as "to account".

28 Counsel for the Defendants submitted that the acceptance of the cheques which were intended to be rent and additional deposit constituted waiver on the part of the landlord; in the alternative by accepting the cheques the landlord is estopped from denying that the lease has been renewed. In support of this contention the Defendants' counsel cited several cases. He also referred to the fact that previously all the correspondence between the parties was by ordinary mail. He submitted that this too constituted waiver and/or gave rise to estoppel.

29 The first case cited is Windmill Investments v Milano Restaurant < 1962 > 2 All ER 680. The case raised the question whether acceptance of rent after knowledge of a breach of the terms of the lease could constitute waiver. There the receipts issued expressly stated that it was given without prejudice to the breach. Megaw J held that "it is a question of fact whether the money tendered is tendered as, and accepted as, rent, as distinct, for example, from money tendered and accepted as damages for trespass. That is a question of fact. Once

it is decided as a fact that the money was tendered and accepted as rent, the question of its consequences as a waiver is a matter of law." In the case he held that the money was accepted as rent as the receipt so stated and thus there was waiver.

30 The second case cited is Segal Securities Ltd v Thoseby < 1963 > 1 All ER 500. There the sub-lease provided that the tenant covenanted "to use the demised premises for the purpose of a private residence in the occupation of one household only." Over a period of years the defendant had taken in lodgers. In July 1960, the head-lease was assigned to the plaintiffs. On 8 June 1962 the plaintiffs gave the defendant 28 days to remedy the breach. However, on 25 June 1962 the plaintiffs, by their solicitors, demanded the rent due in advance. The letter was marked "without prejudice" and concluded with these words "This demand is made or given without prejudice to the notice dated ... June 8, 1962 and to any breaches of covenant in respect of user, subletting ..." Sachs J, after referring to authorities, concluded that "once rent is accepted a waiver results" and that the intention of the parties was quite irrelevant. He then went on to consider the question whether a demand made without prejudice could operate as a waiver and he answered it in the affirmative. But I ought to add that Sachs J did differentiate this sort of a case from the case where rent was accepted after expiry of lease. He said (at page 506):-

31 "I would mention that, of course, that is not so where the acceptance of rent has to be considered after the expiry of a lease by effluxion of time or notice - a distinction which has been adverted to in more than one authority."

32 The third case cited is Central Estates Ltd v Woolgar (No 2) < 1972 > 3 All ER 610. This is also a case concerning acceptance of rent after grounds existed to forfeit the lease. What is interesting about this case is that the demand

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for rent and the acceptance of it was done by a clerk of the managing agents who failed to receive an internal memorandum informing all the staff of the decision to forfeit the tenant's lease and instructing them not to demand or accept rent from the tenant. In fact at the time of paying the rent the tenant knew that the landlord's intention to forfeit the lease remained unchanged. The Court of Appeal held that there was waiver, even though the clerk who sent out the notice and accepted the rent acted in ignorance. Denning MR put it in this way (at page 614):-

33 "It does not matter that they did not intend to waive. The very fact that they accepted the rent with the knowledge constitutes the waiver. The position here is quite plain. The agents, who had full authority to manage these properties on behalf of the landlords, did demand and accept the rent with full knowledge. It may be that the instructions did not get down the chain of command from the partner to the subordinate clerk who issued the demands and gave the receipts for rent. That cannot affect, to my mind, the legal position. It comes within the general rule that the knowledge of the agent - and of his clerks - is the knowledge of the principal. A principal cannot escape the doctrine of waiver by saying that one clerk had the knowledge and the other received the rent. They must be regarded as one for this purpose. The landlords' agents knew the position and they accepted the rent with knowledge. That is a waiver."

34 But it seems to me that none of these cases applies to the fact situation here where the payments tendered were accepted after the 3-year lease had expired. Denning MR also recognised this difference in Central Estates v Woolgar (No 2) where he said (at page 614) "if it is sought to say there is a new tenancy by acceptance of rent; for instance, after a notice to quit has expired, the question always is, as Lord Mansfield said 'qui animo the rent was received, and what the real intention of both parties was.'"

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35 The authorities indicate that there is a clear difference between a case where a landlord accepts rent from a tenant who has incurred liability to forfeiture and a case where a landlord accepts rent after the landlord has given notice to quit. This difference was re-affirmed by the Court of Appeal in Clarke v Grant < 1950 > 1KB 104 where Lord Goddard said at 105:-

36 "It has always been held that if the landlord accepts rent after notice of forfeiture he thereby acknowledges that the lease is continuing. With regard to the payment of rent after a notice to quit, however, that has never been the law; if a notice to quit has been given in respect of a periodic tenancy, such as a yearly tenancy, the result is to bring the tenancy to an end just as effectually as if there had been a term which had expired. Therefore, when a landlord has brought a tenancy to an end by means of a notice to quit, a payment of rent after that date will only operate in favour of the tenant if it can be shown that the parties intended that there should be a new tenancy."

37 The Court of Appeal expressly disapproved Hartell v Blackler < 1920 > 2 KB 161 which held otherwise. Lord Goddard declared that the court in Hartell v Blackler fell into error in "confusing an acceptance of rent after a notice of forfeiture with acceptance of rent after the expiration of a notice to quit."

38 Woodfall on Landlord and Tenant (21st Release) states at para 1-2028 as follows:-

39 "Acceptance by the landlord of rent due after the expiration of a notice may be evidence upon which the court will infer the creation of a new tenancy. However, in each case the question is, quo animo the rent is received, and what is the real intention of the parties."

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40 Whether a new tenancy is created following the expiry of an earlier tenancy is to be gathered from all the circumstances of the case. In Thompsons Ltd v Phillips < 1945 > 2 All ER 49 an employee was allowed to occupy certain premises for which he was to receive 15 shillings less each week in wages. It was also agreed between the parties that the employee would vacate the premises immediately he ceased to be so employed. On the termination of his employment the employee requested and was allowed to stay on for two weeks and he paid the employer 15 shillings per week. The employee contended that the acceptance of the payment for the two weeks was sufficient evidence on which a new agreement for a tenancy could be found or inferred. The Court of Appeal disagreed and held that there was no evidence from which the creation of a new tenancy could be inferred. I think the judgment of MacKinnon LJ at page 51-2 is instructive on this entire question of waiver and the creation of a new tenancy:-

41 "You can make an agreement either by express terms or impliedly by conduct. There clearly was no evidence whatever of any express agreement, and I can discover no evidence upon which it could properly be held that by their conduct the appellants entered into a new agreement with the respondent. The real truth is that this was an attempt to rely upon the very technical rule that acceptance of the rent after forfeiture of the lease may amount to waiver of the forfeiture. The fallacy of that argument as applied to the acceptance of rent after a valid notice to quit was, I think, very correctly stated by LUSH J., in Davies v Bristow (1). He said at p. 437:

42 The expression "waiver of a notice to quit," though convenient as a description of the position where both landlord and tenant agree that a notice which has expired shall be treated as inoperative, is an inaccurate expression, and if one attempts to found a proposition of law upon it, it is likely to lead one

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astray. Where a breach of covenant available for forfeiture has been committed by a tenant it is correct enough to say that the landlord can waive the forfeiture, for by the breach of covenant the term is not avoided, it is only rendered voidable at the landlord's option. He can elect whether to affirm or disaffirm the tenancy, and if he by some act evinces an unequivocal intention to affirm it, as by the acceptance of rent with notice of the breach, he cannot afterwards insist on the forfeiture ...

43 Then a little later he says, at p. 438:

44 When once the notice to quit has expired the position of the parties is precisely the same as it would be if the original lease had provided for the determination of the term on the date mentioned in the notice. There is in that case no room for election by the landlord. The landlord and the tenant may, of course, agree that a new tenancy shall be created on the old terms, and that is what in effect they do when they agree that the notice to quit shall be waived. But the agreement to continue the tenancy must be proved.

45 So here, any alleged agreement to create a new tenancy must be proved, and I can see no evidence on which any such conclusion could be founded."

46 On the facts of the present case and in the light of the authorities discussed above, I do not see how waiver or estoppel can arise. Quite clearly by 30 Nov 1990 the 3-year lease had expired. The Defendants had failed to exercise the option in accordance with the lease. In accepting the payments the Plaintiffs' solicitors expressly stated that the cheques would be treated as the Defendants' payment towards account of the mesne profits and/or would be used to defray the losses and damages suffered by them as a result of the Defendants' wilful refusal to vacate the said premises. As stated, the receipt issued was marked

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"without prejudice" and described the payment as "to account". I do not think the fact that on 19 Dec 1990 the Defendants' solicitors wrote to say that the cheques were "for specific purposes and accounts stated therein and not otherwise" and that the two cheques were only banked in on 20 Dec 1990, make any difference. The fact remains that by then the lease had long expired. I would also add that on 25 Feb 1991 the Defendants' solicitors forwarded a cheque for $42,900/- being advance rent for the next quarter, March to May 1991. M/s Lee and Lee in accepting the cheque said "our clients reiterate their stance that they are entitled to and would accept your clients' payment without prejudice to their rights in any way whatsoever" and also informed the Defendants' solicitors that the Plaintiffs would commence proceedings in court. I think it impossible to find on these facts that the parties had agreed to create a new tenancy or to extend the tenancy.

47 Finally, I will refer to the argument that because the Plaintiffs themselves had in the past used ordinary post to write to the Defendants, and here the court was referred to pages 92 to 107 of the bundle of documents exhibited to the affidavit of the Stanley Tay filed on 18 May 1991, waiver or estoppel arises. Two brief points may be made in answer thereto. First, none of the communications exhibited in pages 92 to 107 of the bundle of documents relates to a notice under the lease; in fact, they relate to renewal of certificate of maintenance of lift with the relevant authorities; a reply in response to a query on standby generator; and a notice from the Revenue department under section 20(2) of the Property Tax Act and notice of objection by owner. Indeed on two occasions (on pages 102 and 103) the Defendants despatched the letters to the Plaintiffs by hand. Second, and more importantly, the provisions of clause 4(f) are a complete answer to this argument:-

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48 "(f) No consent (or) waiver expressed or implied by the parties to or of any breach of any stipulated condition or duty of the parties shall be construed as a consent or waiver to or of any breach of the same or any other stipulated conditions or duty and shall not prejudice in any way the right powers and remedies of the parties herein contained."

49 The result of this case is unfortunate from the point of view of the Defendants. But they must bear the consequences of their own default. They are themselves to blame. On a communication as crucial as this, the Defendants have failed to exercise that degree of care to ensure that they either comply with clause 4(h) or ensure that the written request was received by the Plaintiffs. It seems to me that this matter was dealt with by the Defendants in a rather casual manner, a manner which one would adopt in relation to routine communications. Further, though the written request of 6 Aug 1990 ended with the words "Please proceed accordingly", the Defendants made no effort to contact the Plaintiffs directly (more likely than not the Defendants had forgotten) when no acknowledgement was received from the Plaintiffs by the end of August 1990, that being the final moment when the written request must be received by the Plaintiffs.

50 In the result, I hold that the Defendants have not exercised the option to extend the lease within the prescribed time and accordingly the lease dated 14 Oct 1987 expired on 30 Nov 1990. I also order the Defendants to vacate the premises, and pay damages to be assessed in accordance with section 19(4) of the Civil Law Act until possession of the premises is delivered up. The Defendants are to pay the costs of these proceedings.

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Chao Hick Tin J

Quek Mong Hwa (with Joyce Lee Suet Lin) for the plaintiffs
Tan Cheow Hin (with Jacqueline Loh) for the defendants

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