

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 61

Suit 3636/1984

Between

Fong Holdings Pte Ltd

... Plaintiff

And

Computer Library (S) Pte Ltd

... Defendant

GROUND OF DECISION

Contract — Consideration — Promissory estoppel; Landlord and Tenant —
Termination of leases

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Fong Holdings Pte Ltd v Computer Library (S) Pte Ltd

[1991] SGHC 61

Suit 3636/1984
Chan Sek Keong J
09 May 1991

1 Cur Adv Vult

2 This is a claim by the plaintiffs as landlords against the defendants for loss of rent in respect of two shop units (‘the premises’) on the ground floor of Parklane Shopping Mall at the rate of \$4,600 per month for ten months less a deposit security of \$4,600.

3 The claim is made pursuant to a tenancy agreement dated 15 April 1982 whereby the plaintiffs let to the defendants the premises for a fixed term of 24 months commencing on 15 April 1982 at the rent of \$4,600 payable per month in advance. The defendants also deposited with the plaintiffs the sum of \$4,600 ‘to hold as security for any claim which the landlord may have against the tenant under the terms of this agreement on the signing of this agreement and if the tenant shall fail to perform and observe any of the covenants conditions stipulations and agreements then the said deposit shall be forfeited by the landlord absolutely ...’.

4 On 15 January 1984, the defendants sent to the plaintiffs a letter in the following terms:

Further to our letter of 28 December 1983, pertaining to the verbal telephonic agreement between your Mrs Solomon, Mrs Chua and the undersigned, we are forwarding the following:

(1) A cheque in the amount of \$13,800 computed as follows:

(a) outstanding rental for four months @ \$4,600 per month

(b) less deposit of \$4,600 paid initially when agreement was entered into

(2) A set of three keys (returned for your possession)

With the above in view, we trust everything is properly settled and appreciate your acknowledgement of receipt of this letter by signing on the duplicate and returning to us as soon as possible.

Thank you.

5 The letter dated 28 December 1983 read:

Subsequent to the discussion between your Mrs Chua, Mrs Solomon and the undersigned, we wish to confirm that we will vacate the abovesaid two units effective 15 January 1984. Such decision was made consequent to the expressed permission and agreement of yourself as landlords, notwithstanding the fact the formal agreement signed should lapse by 14 October 1984.

6 In view of the abovesaid, we are forwarding a cheque of \$13,800, being the outstanding rental for the months of: 15 September to 15 October; 15 October to 15 November; 15 November to 15 December; and 15 December to 15 January 1984 after deduction of the deposit of \$4,600 paid initially when the agreement was entered into.

7 With regard to the monthly service charge, a separate cheque will be drawn to cover the expenses up to 15 January 1984. This will be made direct to the Management Corporation Strata Title No 561.

8 As a verification of the correctness of the contents, please sign on the duplicate copy for our file.

Thanking you.

Yours faithfully

Computer Library (S) Pte Ltd

Steven Lek

Managing Director

We, Fong Holdings Pte Ltd, verify correctness of the contents stated above.

9 Mrs Chua was the governing director of the plaintiffs and Mrs Solomon was the private secretary of Mrs Chua. She assisted Mrs Chua in typing letters and answering telephone calls for Mrs Chua. Steven Lek was the managing director of the defendants.

10 The dispute between the parties was whether there was an agreement as set out in the defendants' letters of 15 January 1984 or of 28 December 1983.

11 Mrs Chua testified as follows: the plaintiffs, of which she was the governing director, owned several shop units in the building and that her office was also in the same building; that in December 1983, she had spoken with Steven Lek by telephone when he sought her consent to surrender the defendants' tenancy as his business was not doing well on account of the poor location of the premises; that she agreed to the request but only if a substitute tenant could be found on the same terms; that both of them should try to get a new tenant; that accordingly, she caused two advertisements to be published in ***The Straits Times*** on 29 December 1983 and 7 January 1984, at her own expense; that although she had spoken with Steven Lek several times, she did not meet him at his shop in November 1983, although she was often in the shopping mall; that she did not confirm the letter of 28 December 1983 because it did not reflect their agreement on the matter; that the keys to the premises were not enclosed in the letter of 15 January 1984 but were returned separately in the evening and handed to an office boy without her knowledge and consent;

that she consulted her solicitors on the letter of 15 January 1984 and was advised that she was entitled to accept the cheque for \$13,800 as the defendants were in arrears of rent; that she instructed her solicitors to send a letter dated 30 January 1984 to the defendants to demand payment of future rent; that after that date she did not do any renovation to the premises and left it in the state and condition as surrendered by the defendants.

12 The above account, in sum, was the story of Mrs Chua. The other part of her account will be considered in relation to Steven Lek's account of the events. Mrs Solomon also testified but much of her evidence was hearsay. That which she had personal knowledge had little bearing on the facts in dispute.

13 Steven Lek's testimony was as follows: that, because of poor business due to the location of the premises, which was situated at an isolated part of the shopping mall, the defendants were always late in paying their rent; that sometime in November 1983 when Mrs Chua came to the premises to ask for rent, he explained to her why he could not pay the rent and why his business was bad; that he told her it would be good for him and for her if he were allowed to terminate the tenancy early; that if she agreed to the proposal, he would pay up all arrears of rent and maintenance charges; that Mrs Chua did not agree there and then but would think about it; that during that month, he spoke to her several times on the telephone and she finally agreed to allow him to move out on 15 January 1984; that after obtaining Mrs Chua's agreement, he wrote a letter dated 25 November 1983 to the plaintiffs setting out the terms of the agreement, viz that the defendant would vacate the premises on 15 January 1984 on three conditions: (a) all rent arrears up to 15 January 1984 be paid up; (b) all service charge arrears be paid up; and (c) the premises be returned in good condition.

14 Steven Lek said the letter of 25 November 1983 was sent to the registered office of the plaintiffs. This evidence was corroborated by his sales assistant (`DW2`) who had typed the letter. This letter did not reach Mrs Chua, and when told later about it, Steven Lek sent her a copy thereof on 28 December 1983 under a covering letter. This was received.

15 Steven Lek continued his testimony as follows: that he was doing his accounts in December when he realized that he had not received written confirmation of the agreement from Mrs Chua, so he telephoned her in Hong Kong (where she was normally on vacation with her husband at that time of the year) and was told by her that he could trust her word; that to make sure that there was no trouble later, he sent her another letter dated 28 December 1983 to confirm the terms of the agreement; that he suggested 15 January 1984 as the date for the surrender as he needed the premises to store his stocks whilst waiting for other premises in the same building to be refurbished and made ready for business; that he had not agreed to look for a substitute tenant for the premises as that was not part of the agreement; that he vacated the premises and despatched the cheque and keys in the letter of 15 January 1984 which reached the plaintiffs only on 18 January 1984 because the letter had to be sent by LUM after an unsuccessful despatch to the registered office of the plaintiffs.

16 With respect to the other premises, Steven Lek`s testimony was that at around the time he was trying to terminate the tenancy he found another shop unit in the same building which was next to the entrance of the building and adjacent to Selegie Road. He thought that was a better location to do business. (I should add that it did not turn out that way at all based on the audited accounts of the company for that financial year.) Accordingly, he secured a tenancy of this unit in the name of another company called Computer Supermarket (S) Pte Ltd for ten months commencing on 1 January 1984 at the rent of \$5,000 plus

half the maintenance charges. On or about 29 January 1984, Mrs Chua saw Steven Lek in his new premises. According to Steven Lek, she became very angry when she found out that he had rented another unit in the same building and said that if she had known of his intention she would never have agreed to allow him to terminate his tenancy early. Naturally, she denied these alleged remarks, although she admitted seeing Steven Lek carrying on business there. Except for this incident and her later conduct in commencing proceedings, he had earlier found Mrs Chua a nice and considerate person.

17 The sales assistant of the defendants also testified. Her evidence was rather confused, and accordingly, I place no weight on it.

18 The crux of the matter is whether I should believe the account of Mrs Chua or that of Steven Lek. Having regard to their demeanour, but more particularly the documentary evidence, I have little hesitation in believing Steven Lek. Her denial that she did not meet Steven Lek at his shop in November 1983 was highly improbable, given the fact that her office was in the same building, her admission that she was often in the shopping mall, and the invariable lateness in the payment of rent by the defendants.

19 There were many other factors which pointed to the existence of an agreement for early termination. For example, her failure to deny either orally or in writing the letters of 25 November and 28 December 1983. More surprising was the omission of her solicitors to reply to the letter of 15 January 1984 until 30 January 1984, if she indeed had instructed her solicitors, as alleged, before she saw Steven Lek on or about 29 January 1984. The timing was just too much of a coincidence. The solicitors' letter dated 30 January 1984 had stated that they were instructed by the plaintiffs that the defendants had vacated the premises 'sometime this month without our clients' knowledge or

consent`. Consent was in dispute. Knowledge certainly was not, having regard to the defendants` prior letters. The said letter made no mention whatever of the defendants` letters which set out their understanding of the agreement to surrender the tenancy. It also did not refer to the delivery of the keys to the plaintiffs, or their alleged refusal to accept them. This, I find, to be exceedingly uncharacteristic of a lawyer`s letter of demand. It is as if the prior events leading to the vacation of the premises on 15 January 1984 had never happened, or that the plaintiffs had not informed the solicitors about them. The only probable explanation for this, and I so find, was that the said letter was written as a result of the dismay and anger of Mrs Chua in thinking that Steven Lek might have taken advantage of her. If there had been no agreement in the mind of Mrs Chua, a reply from her or her solicitors would have been sent shortly after the letter of 15 January 1984. This letter and the conduct of Mrs Chua were, in my view, entirely consistent with the existence of an agreement to surrender rather than the opposite.

20 Accordingly, I find that there was an oral agreement between the plaintiffs and the defendants for the early termination on 15 January 1984 of the tenancy agreement. I also find the keys to the premises were enclosed in the letter of 15 January 1984 and were received by the plaintiffs with the letter and the cheque.

21 On these findings, the first issue of law before me is whether the surrender was effective under the law. Counsel for the plaintiffs submitted that as the agreement was oral, it was ineffective for non-compliance with s 4 of the Statute of Frauds 1677. Section 4 has nothing to do with surrenders of leases or tenancies. What counsel had in mind was s 3 which I shall consider later.

22 Counsel for the plaintiffs also cited a number of cases where it was decided that the return of the keys by the tenant coupled with their retention by the landlord was not sufficient to effect a surrender, unless there was some unequivocal act of retaking possession of the premises by the landlord. Counsel for the plaintiffs cited **Smith v Roberts** [1892] 9 TLR 77 **Oastler v Henderson** [1876] 2 QBD 575 **Phene v Popplewel** 1 [1862] 12 CBNS 334 at pp 334-337, **Highway Properties Ltd v Kelly Douglas Co Ltd** [1971] 17 DLR (3d) 710 **Fenner v Blake** [1900] 1 QB 426 In the present case, Mrs Chua testified that she had left the premises alone after the defendants had vacated it. Hence, counsel argued that there was no unequivocal act of retaking possession. It was also argued that advertising the premises for a tenant was in itself equivocal.

23 The said authorities were concerned with surrenders by operation of law and not express surrenders. What amounts to a surrender by operation of law is stated by Evershed MR in **Foster v Robinson** 6 at p 155:

*That there may be a surrender apart from any writing is clear, and that condition is expressly preserved by s 52 of the Law of Property Act 1925. What, then, amounts to a surrender by operation of law? We have been referred to many cases, including **Lyon v Reed** 13 M & W 285, and to the well-known judgment of Parke B in that case. I think that for present purposes it is sufficient to refer to **Foa's Law of Landlord and Tenant** (7th Ed) pp 617 and 618: 'It has been laid down that in order to constitute a surrender by operation of law there must be, first, an act of purported surrender invalid per se by reason of non-compliance with statutory or other formalities, and secondly, some change of circumstances supervening on, or arising from, the purported surrender which, by reason of the doctrine of estoppel or part performance, makes it inequitable and fraudulent for any of the parties to rely upon the invalidity of the purported surrender.' The fact that the doctrine of estoppel really forms the foundation in such a case as this of the alleged surrender by operation of law is, I think, clear from the judgment of Chitty J in **Wallis v Hands** [1893] 2 Ch 75.*

24 In the present case, there was a **prior** agreement, albeit oral, for the surrender of the tenancy. Accordingly, the first issue the court must determine is whether the agreement complies with the requirements of s 3 of the Statute of Frauds 1677 which provided as follows:

*... That no leases ... of ... lands ... shall ... be assigned, granted or surrendered, unless it be by deed or **note in writing**, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law. (Emphasis added.)*

25 In England, this section has been replaced by s 52(1) of the Law of Property Act 1925 which provides that, subject to certain exceptions, a surrender must be by deed only, although equity may give effect to an express surrender made by mere writing: see Gray, *Elements of Land Law* (1987) p 487; Megarry and Wade, *The Law of Real Property* (2nd Ed) p 673.

26 The defendants' letter of 15 January 1984 was clearly a sufficient note to effect the surrender of the premises in terms of s 3 of the Statute of Frauds 1677. It was in writing signed by the party surrendering the premises, and it enclosed the keys to the premises. Of course, if the said letter had been sent and the keys returned without the consent of the plaintiffs, such an unilateral act could not have affected the rights of the plaintiffs. But, where, as here, the letter was written and the acts evidenced thereby were done by the defendants in performance of a prior oral agreement to surrender, it was surely effective to operate as an express surrender under s 3, as no further consent of the landlord was required. It is not necessary to consider whether, if the tenancy or its residual term had been for longer than three years, s 53 of the Conveyancing and Law of Property Act (Cap 61) would have required a surrender by deed.

27 Even if the letter of 15 January 1984 and its contents did not comply with s 3 of the Statute of Frauds 1677, I am of the view that there was a surrender

by operation of law. The reason is that the acceptance or retention of the keys of the premises by the plaintiffs, although in itself equivocal, was no longer so once the oral agreement to surrender has been proved. The retention or acceptance of the keys could be explained in terms of the oral agreement. In **Grimman v Legge** [1828] 8 B & C 324[] 108 ER 1063 it was decided that where there is an agreement between the landlord and the tenant that the latter shall deliver up possession, and possession is delivered up accordingly, there is a surrender by operation of law. In this connection, the headnote in **Phene v Popplewel** 1 [1862] 12 CBNS 334 is incorrect in so far as it implied that there was an express agreement between the landlord and the tenant to put an end to the term in that case. There was no such agreement. The tenant had gone bankrupt, quitted the premises and tendered the keys to the landlord who declined to receive them.

28 There was also an argument before me on whether there was any consideration for the plaintiffs' agreement to accept the surrender and whether, for that reason, the **High Trees** principle applied. Counsel for the plaintiffs submitted that there was no consideration in that the defendants did what they were only under an obligation to do, viz to pay the arrears of rent and maintenance charges, and that there was no estoppel of any kind against the plaintiffs. This argument cannot be accepted for the following reasons: firstly, consideration is not necessary for the application of the **High Trees** principle. In the case itself, viz **Central London Property Ltd v High Trees House Ltd** [1947] 1 KB 130 the tenants had given no consideration for the agreement of the landlords to reduce the rent for the period of the war. If the express surrender was not valid by reason of the Statute of Frauds 1677, or there was no surrender by operation of law, there is no reason why promissory estoppel should not be

applied to the present case to estop the plaintiffs from claiming that she is entitled to future rents.

29 Secondly, I think that there was consideration for the promise of the plaintiffs to agree to the surrender. Although the defendants were under a legal liability to pay the arrears of rent to the plaintiffs and maintenance charges directly to the management corporation, nevertheless the plaintiffs did derive a benefit from the receipt of the arrears of rent and from being relieved of having to pay the arrears of maintenance charges, as otherwise they might not have been paid at all. It should be recalled that the defendants' business was poor and losing money. There was no certainty that the defendants would have been able to pay the arrears of rent or future rent if they had stayed on. Moreover, the plaintiffs also derived a benefit in being able to let the premises out again. They did place advertisements before and after the surrender of the tenancy on terms and conditions which were only slightly less favourable than those applicable to the defendants. The premises were not let out until after the expiry date of the tenancy, but there was no evidence that they could not have let out the premises at any rent. In **Williams v Roffey Bros & Nicholls (Contractors) Ltd** [1990] 1 All ER 512 the Court of Appeal held that where a promisor makes a promise as a result of which he obtains a benefit or obviates a disbenefit, that was sufficient consideration for his promise, even though the promisee did not suffer any detriment. In that case, the promisee did not suffer any detriment because he had done what he was under a legal obligation to the promisor to do in return for the promise of the promisor.

30 For the above reasons, the plaintiffs' claim is dismissed with costs.

31 **Outcome:**

32 Claim dismissed.

Chan Sek Keong J

Salem Ibrahim and Sylvia Lim (Harry Elias & Partners) for the
plaintiffs
S Hameed (Hameed & Co) for the defendants
