IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 175

Originating Summons No 586 of 1990

Between

City Condominiums Pte Ltd

… *Plaintiff*

And

Rank Xerox (Singapore) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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City Condominiums Pte Ltd v Rank Xerox (Singapore) Pte Ltd

[1992] SGHC 175

Originating Summons No 586 of 1990
Punch Coomaraswamy J
24 June 1992

1 **Judgment:**

2 Coram : Punch Coomaraswamy J

3 **Cur Adv Vult**

4 J U D G M E N T

5 This was an application by the plaintiffs to determine whether they, as purchasers, inter alia, of premises known as Units #19-01, #19-02, #19-03, #19-04, #19-05, #19-06, #19 07, #18-01, #18-02, #18-03 and part of Units #18-04 and #18 07 Fortune Centre, 190 Middle Road, Singapore 0718 (hereinafter referred to as "the premises") were bound by an agreement entered into between the defendants and their then landlord, Allied Developer Pte Ltd (hereinafter called "Allied") around October 1988 for the lease of the said premises for a term of two years with effect from 14 November 1989.

6 After hearing counsel for the plaintiffs and for the defendants, I held that the plaintiffs were bound by the said agreement. I now give my reasons.

7 By an agreement dated 29 June 1989 between City Developments Ltd (hereinafter referred to as "CDL") on the one hand and Allied on the other, CDL agreed to purchase from Allied several offices and shop units at the price of just under $22.86m. The purchased units included the premises which were occupied by the defendants. The sale was made subject to existing tenancies, the particulars of which were set out in the second schedule of the agreement.

8 The schedule was in tabular form containing five columns, respectively headed "Unit Number", "Name of Tenant", "Monthly Rent", "Term of Tenancy" and "Option". Under the heading Option, against some tenancies where apparently there were no options to renew, there was a dash (-); for others, there appeared "1" or "1 year" or "2 years" or "3 years". In respect of the defendants' tenancy, the units let to the defendants were identified with the area and monthly rental respectively stated to be 18,357.36 sq ft and $47,501.10. Against "Term of Tenancy" and "Option" there appeared "3 years wef 14/11/86" followed by a dash (-). The dash was clearly a representation by the vendors, that there was no option for renewal.

9 The defendants' tenancy had originally been entered into with Golden Fortune Development Pte Ltd (hereinafter referred to as "GFD"). GFD subsequently sold the units tenanted by the defendants and other units to Allied. Copies of all the tenancy agreements, including that between GFD and the defendants, were sent to CDL's solicitors on 21 July 1989, together with a request that CDL check the particulars of the tenancies for their accuracy. CDL did check some of the particulars but made no check on the existence of options to renew. Prior to completion on 28 August 1989, CDL expressed the desire to complete the purchase in the name of the plaintiff company which was a subsidiary of CDL. Their wishes were carried out.

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10 The schedule annexed to the agreement of 29 June 1989 was in error not only in giving the impression that the defendants' tenancy agreement had no option to renew. Eight months previous to CDL's agreement to purchase, Allied and the defendants had in fact agreed to changes to the tenancy. By correspondence between the parties in October 1988, the agreed changes were to come into effect, some earlier and others on 14 November 1989 upon expiry of the tenancy agreement specified in the schedule. The area was to be reduced by 943 sq ft and this had in fact taken place in December 1988. The tenancy for the revised area had been extended for a further two years from 14 November 1989 to 13 November 1991 and the rent was reduced to $2.50 per sq ft from an effective rent of $2.70 per sq ft.

11 In apparent ignorance of these changes effected in October 1988, the plaintiffs, on 18 September 1989, offered the defendants a renewal of the lease of the premises for a further term of two years at an increased rent of $86,279.59 per month. By a fax sent on 22 September 1989, the defendants informed the plaintiffs that the defendants had already agreed with Allied by way of correspondence between 28 September 1988 and 20 October 1988 to renew the lease for two years from 14 November 1989 at the rate of $2.50 per sq ft.

12 The plaintiffs say this was the first time they had heard of the October 1988 agreement and they asked Allied's solicitors why they had not been informed of the renewal. Allied's solicitors explained that the relevant correspondence had been omitted from the bundle of tenancy agreements sent to the plaintiffs by inadvertent oversight.

13 Unable to reach agreement on whether the agreement between the defendants and Allied was binding on the plaintiffs, the parties agreed to refer the matter to Court. An application was made for determination of the issue by

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originating summons No 586 of 1990 filed on 30 May 1990 and the summons came for hearing before me on 10 April 1992.

14 Before me, counsel for the plaintiffs pointed out that the property involved was registered land and hence, the provisions of the Land Titles Act (Cap 157) ("the Act") applied. He referred me to s 3 of the Act which in effect repeals all laws and practices relating to estates or interests in land as regards registered land in so far as they are inconsistent with the Act. Relying on s 38 of the Act which provides for the paramountcy of the proprietor's estate, he argued that, subject to the applicability of any of the exceptions listed in s 38, the plaintiffs held the land free of the defendants' tenancy as it had not been registered. He stressed that the register was everything and that, save in the case of fraud (and the s 38 exceptions), the Act dispensed with the need of going behind the register in order to investigate title. See s 39 of the Act and the following cases : MCST 446 v Singapura Developments (Pte) Ltd, MC Suit No 753/88 appeal to Chao JC, Waimiha Sawmilling Co. v Waione Timber Co. < 1926 > AC 101, Beesly v Hallwood Estates Ltd < 1960 > 2 All ER 314.

15 In relation to the question whether any of the s 38 exceptions applied, the only possible exception was s 38(1)(f), which reads:

16 the rights of any person in occupation of the land under a tenancy when the proprietor became registered as such, provided that the term of the tenancy when created did not exceed 3 years and could not have been extended by exercise of an option of renewal to exceed in the aggregate 3 years; ...

17 The plaintiffs argued that no matter how one viewed the relationship between the renewal agreement and the option to renew, the defendants did not come within the s 38(1)(f) exception. Firstly, assuming the renewal agreement

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arose pursuant to the exercise of the option to renew, the defendants were, at the time the plaintiffs became registered as proprietors, in occupation under a tenancy created by the lease dated 23 April 1986 for a term of 3 years (commencing on 14 November 1986) which could be extended by the exercise of an option for renewal for a further 3 years. Hence, the plaintiffs asserted the term would exceed in aggregate 3 years and the defendants would not fall within the ambit of 38(1)(f).

18 Secondly, even if the renewal agreement did not result from the exercise of the option to renew, they would still not be protected by s 38(1)(f) which requires occupation "under a tenancy when the proprietor became registered as such". The plaintiffs were registered as proprietors on 27 August 1989 but on that date, the defendants were in occupation under the tenancy created by the lease dated 23 April 1986. According to the terms of the renewal agreement concluded on 20 October 1988 they were not to commence occupation under it until 14 November 1989.

19 What the defendants should have done, it was argued for the plaintiffs, was to protect themselves by means of a caveat but this was not done. Hence, the defendants could not enforce against the plaintiffs the rights which they had against Allied.

20 Counsel for the defendants argued that the plaintiffs were under a duty as purchasers to make inquiries and in this connection, referred me to Hunt v Luck < 1902 > 1 Ch 428, Meenachi Sundram & Anor v Kunjan Pillai < 1955 > 21 MLJ 128 and Ong Heng Hwa Realty Sdn Bhd v Teoh Chai Siok < 1977 > 1 MLJ 124. In the last mentioned case, Syed Agil Barakbah J, relying on Hunt v Luck, said:

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21 It is the duty of the purchaser who has notice that the vendor is not in possession of the property to make inquiries from the tenant in possession and find out from him what his rights are. If he does not choose to do that then whatever title he acquires as purchaser will be subject to the title or right of the tenant in possession.

22 The two standard tenancy agreement specimens and other tenancy agreements sent by Allied's solicitors had contained option to renew clauses which the plaintiffs would have discovered if they had checked for them as they were bound to do. The plaintiffs could not now be heard to say that they were not aware of such options.

23 Addressing the plaintiff's arguments centred on the Land Titles Act, counsel stressed that the Act distinguishes between registrable and non-registrable leases. Part VIII of the Act provides for the registration of leases with terms exceeding 3 years. Leases under 3 years are not registrable and s 76(5) provides that:

24 Nothing in this Part affects the law relating to tenancies for terms not exceeding 3 years.

25 Hence, there was no need to lodge a caveat to protect short-term tenancies.

26 In relation to the s 38(1)(f) exception, he stressed that it referred to the term of the tenancy "when created". An option to renew, till exercised, was as good as giving a tenant no more than the original term. Hence, the term of the lease should be calculated with reference only to the term existing when the lease was created. In support, counsel pointed out that s 76(3) provides that an

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option for renewal should not be taken into consideration in determining whether the term of a particular lease exceeds 3 years. Counsel further analyzed the nature of the right that arises when a person falls within the ambit of the sub-section. Such rights are equitable rights. As was said in National Trustees & Co. v Boyd < 1926 > 39 CLR 72, 82, "An unregistered lease operates not merely to create contractual rights and duties, but to create an equitable term of years and a tenure by estoppel between the lessor and her privies, and the lessee." Counsel further sought to distinguish the cases cited by counsel for the plaintiffs on the ground that they were concerned with foreign statutes with different wording or were not relevant.

27 In reply, counsel for the plaintiffs argued that the statutes of foreign jurisdictions that he had cited were substantially in pari materia with local legislation and that although the exceptions varied among the jurisdictions, the manner of approach of the courts should be the same. He further cited comments in Woodman and Nellie's The Torrens System in New South Wales made in relation to s 42(d) of the New South Wales Real Property Act 1900 < roughly corresponding to our s 38(f) > , as follows:

28 It is important to note that a lease for a period not exceeding three years and containing an option to renew, so that the term of the lease and the option when compounded exceed three years, does not require registration under s 53(1) ... However, such a lease does not come within the provisions of s 42(1)(d), and hence should be protected either by registration or lodgment of a caveat.

29 As s 104 of the Land Titles Act provides for the lodgment of caveats, the defendants should have lodged a caveat to protect their interests. Counsel sought to distinguish Ong Heng Hwa on the ground that the National Land Code

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was based on a different approach to the Land Titles Act. The former preserved part of the former law, whereas the latter repealed the old law in so far as it was inconsistent with the provisions of the Act in its application to registered land.

30 Furthermore, the estoppel cases cited were cases in which the argument prevailed against the landlord directly, not against the landlord's successor in title who was unaware of the previous owner's doings. The defendants would have a remedy against the original lessor since "the lessor remains bound by his covenant despite a sale of the freehold reversion. He will, therefore, be liable in damages to the tenant for the purchaser's refusal to renew": Barnsley's Conveyancing Law and Practice.

31 In reply, counsel for the defendant argued that the New South Wales legislation was distinguishable from our legislation. In particular, the former legislation provided no means for computing time.

32 I agreed with the gist of the submissions of counsel for the defendants. Part VIII of the Act provides that nothing in it affects the law relating to tenancies for terms not exceeding 3 years. In this way, the Land Titles Act expressly provides that the validity of such agreements are not affected, as does the National Land Code, its Malaysian counterpart. Equity will give effect to such tenancies: see National Trustees & Co. v Boyd (1926) 39 CLR 72, 82. The Ong Heng Hwa Realty case applied this equitable principle to a vendor's successor in title for "... It is the duty of the purchaser who has notice that the vendor is not in possession of the property to make inquiries form the tenant in possession and find out from him what his rights are". In both that case and the present case, this duty was not carried out. Thus, "... whatever title he acquires as purchaser will be subject to the title or right of the tenant in possession" (Ong Heng Hwa Realty applying Hunt v Luck). In the present case, the plaintiffs' title

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is therefore subject to the defendants' rights under the tenancy agreement as revised in October 1988 between GFD and the defendants.

33 Having indicated my decision to the parties, I invited them to bring me a draft order which properly described the units tenanted by the defendants with the deposit for the tenanted area as revised by the October 1988 agreement worked out. They did this and I accordingly declared and ordered:

34 (1) that the plaintiffs as purchasers of premises known as Units #19-01, #19-02, #19-03, #19-04, #19-05, #19-06, #19-07, #18-01, #18-02, #18-03 and part of Units #18-04 and $18-07 Fortune Centre, 190 Middle Road, Singapore 0718 (hereinafter referred to as "the premises") from one Allied Developer Pte Ltd (hereinafter called "Allied") are bound by an agreement entered into between the defendants and their landlord, the said Allied in or about October 1988 for the lease of the said premises for a term of two (2) years with effect from 14 November 1989 to 13 November 1991 at the rate of $2.50 per sq ft. (2) That the plaintiffs execute accordingly a lease in favour of the defendants incorporating the terms of the agreement and all the other terms and conditions contained in the lease dated 23 April 1986 and entered into between Golden Fortune Development Pte Ltd and the defendants which do not conflict with the said terms of the agreement except that the proviso for renewal contained in clause 9(c) of the said Lease dated 23 April 1986 shall be deleted. (3) That since the rental deposit of $300,283.20 presently held by the plaintiffs is in excess of the amount of the deposit payable by the defendants to the plaintiffs pursuant to the Agreement, the plaintiffs refund to the defendants the sum of $36,388.20 being the amount of such excess. (4) That the plaintiffs pay the defendants the costs of these proceedings to be taxed.

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35 Before I conclude, I wish to draw attention to the content of affidavits. The rule that affidavits must be confined to fact is clear. If I may paraphrase words from Megarry VC and Roskill LJ from a judgment of each which I will be citing, the purpose of affidavits is to provide evidence, that is to say, to place facts, whether disputed or otherwise, before the tribunal for whose help they are prepared. They are not designed as a receptacle for or as a vehicle for argument.

36 The passages I propose to cite refer to law and legal argument but what was said equally applies to argument on facts or argument the credibility of other deponents. Argument or submission on fact and credibility should be conveyed to the tribunal by advocates in oral or written submission.

37 One deponent had, in his affidavit, these passages, some of which are of mixed law and fact, in his affidavit:-

38 (a) ... I find the plaintiffs' position entirely strange. (b) If < the plaintiffs have not perused the original tenancy agreement > they clearly have only themselves to blame. (c) I wonder if the plaintiffs are saying < XYZ > . (d) Clearly the < plaintiffs' stand is > untenable. (e) The plaintiffs' stand ... is entirely lame and untenable. (f) ... the plaintiffs' stand ... I find equally surprising. (g) ... I humbly submit the plaintiffs are clearly lying when they say ...

39 In Gleeson v J Wippell & Co. Ltd < 1977 > 3 All ER 54 at 63-c5, Megarry VC said:

40 < ... one affidavit > displays undesirable features that I think ought not to be allowed to pass unchecked. In Mr Brown's affidavit he quotes a passage from an opinion of a silk and he exhibits an article in a journal concerned with

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patents. The object appears to be to demonstrate that the plaintiff has prospects of success against Wippell if her action is not halted. The main objection to the extracts from the article is that they do not appear to me to constitute any evidence; and the purpose of affidavits is, or should be, to provide evidence. As I told counsel for the plaintiff, I would listen with pleasure to any submission on the subject that he chose to put before me, whatever his source of inspiration, but I would not listen to the words of a Queen's Counsel, however eminent, or the author of an article, when proffered as evidence of the legal rights and prospects of a litigant. A court does not hear expert evidence on what the law of England is, or what the rights of parties are under that law. In any case, extracts from counsel's opinion are usually valueless, or worse, without the rest of the opinion and the instructions on which it was based, to show what the opinion was founded on and what reservations and qualifications there are.

41 Roskill LJ dealt with the legal argument in affidavits when he said, in Alfred Dunhill Ltd v Sunoptics SA < 1979 > FSR 337 at 352:

42 I hope it is not out of place to say at this stage that the affidavits filed on both sides are in at least two cases very much too long. Affidavits are designed to place facts, whether disputed or otherwise, before the tribunal for whose help they are prepared. They are not designed as a receptacle for or as a vehicle for legal arguments. Draftsmen of affidavits should not, as a general rule, put into the mouths of the intended deponents legal arguments of which those deponents are unlikely ever to have heard. Legal arguments, especially in interlocutory proceedings, should come from the mouths of those best qualified to advance them and not be put into the mouths of the deponents. There has been much unnecessary paper in this case brought about by the inclusion of legal arguments in affidavits.

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43 With necessary modifications, what Megarry VC and Roskill LJ have said equally applies to argument on fact or the credibility of other witnesses or deponents. This should be borne in mind by the draftsmen of affidavits. Last three pages of the judgment dated 24 June 1992 of Punch Coomaraswamy J in OS 586.90.

Punch Coomaraswamy J

George Pereira (Foo & Quek) for the plaintiffs
Yeo Hock Cheong (Hock Cheong & Co) for the defendants

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