

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 338

DC Suit 6162/1989

Between

Credit Development (Private)
Limited

... Plaintiff

And

ATS Arts Centre Private
Limited

... Defendant

GROUND OF DECISION

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**Credit Development (Private) Limited v ATS Arts Centre
Private Limited**

[1992] SGHC 338

DC Suit 6162/1989
Judith Prakash JC
31 December 1992

1 **JUDGMENT:**

2 **GROUND OF DECISION**

3 By a tenancy agreement dated 1 March 1987, the plaintiffs let to the defendants units #03-16 and #03-17 at High Street Centre, Singapore ("the premises") for a term of three years commencing from 1 March 1987. The rental and service charge for the premises (collectively "the rent") were payable monthly in advance free of deduction.

4 The defendants duly paid the rent for the period between March 1987 and August 1988. They failed however to pay the rent for the period from September 1988 to October 1989. In November 1989 the plaintiffs commenced this action to recover arrears of rent amounting to \$28,441 and interest thereon. They also asked for possession of the premises and mesne profits from the date of service of the writ until the date of possession.

5 In their defence to the plaintiffs' claim, the defendants did not deny the non-payment of rent. Instead they alleged that the rent had been waived by the plaintiff. The defendants contended that from the time they had taken possession of the premises its air-conditioning system had not functioned causing them to make both oral and written complaints to the plaintiffs about the defects in the system. The plaintiffs had, for a long period, failed to take action to rectify the defects. Finally, however, the plaintiffs had agreed to waive the rent until the air-conditioning system had been repaired. They said the plaintiffs had also agreed that the sum of \$36,000 paid by the defendants as rent for the period March 1987 to August 1988 would be used to off-set the rent from 1 February 1989 to 31 July 1990. According to the defendants, 1 February 1989 had been accepted as the recommencement date for the rent as the air-conditioning system had appeared to the defendants to be working after it was repaired some time in December 1988.

6 After the defence was filed, the plaintiffs took out an application for summary judgment. The learned Deputy Registrar examined the letter dated 7 December 1988 from the plaintiffs on which the defendants relied. He accepted the plaintiffs' contention that this letter did not have the effect of waiving the rent already paid up to the time of the letter. Stating that the letter referred to a discussion between the parties on 29 November 1988 and confirmed an agreement to waive the rent on the units until such time as the air-conditioning problem had been resolved, he held this agreement must refer to rent to be paid and not to rent that had been paid up to then. There was no indication of the plaintiffs' intention to waive rent already paid. As for waiver of future rent, after the letter of 7 December 1988 it turned out that no rent was to be waived as the air-conditioning system was found on inspection on 10 December 1988 to be in

good working condition. Therefore the Deputy Registrar held that there was no waiver of rent at all during the material time and gave judgment to the plaintiffs.

7 The defendants appealed to this court. At the hearing before me, counsel for the defendants contended that there were two triable issues:

8 1. whether the plaintiffs had agreed to a waiver of rent until January 1989; and

9 2. whether there was an agreement that previous rent paid totalling \$36,000 would be applied to off-set rent payable from 1 January 1989 until 31 June 1990.

10 To support their argument on the existence of a waiver the defendants relied on two pieces of written evidence:

11 1. the letter of 7 December 1988 mentioned above; and 2. some handwriting on a type-written letter dated 30 December 1986 from the plaintiffs to a company called Cofa Pte Ltd ("Cofa").

12 Dealing with the second piece of evidence first, the defendants claimed that it indicated an agreement on the part of the plaintiffs not to charge rent for the premises from 1 March 1987 until such time as the air-conditioning problem had been resolved. They asserted that because the air-conditioning was not working throughout from 1 March 1987 this agreement meant that the tenancy would not commence until 1 February 1989.

13 To deal with the objection that Cofa and the defendants were separate legal entities and that a promise to Cofa could not be relied on by the defendants,

their counsel alleged that the plaintiffs had treated Cofa and the defendants as being interchangeable. Prior to 1 March 1987 Cofa had been the tenant of the premises. The defendants produced a tenancy agreement between Cofa and the plaintiffs and pointed out that originally the name of the tenant typed into that agreement had been the defendants' name but subsequently the defendants' name had been struck out and Cofa's name inserted in its place. During its tenancy, Cofa had complained about the air-conditioning system in the premises and as a result the plaintiffs had agreed, through one Mr Chua Chye Song who had been their executive director until 31 December 1987, that Cofa's rent would be waived until the air-conditioning system had been fixed. Mr Chua had written a confirmation of this agreement on the said letter of 31 December 1986 sent by Cofa to the plaintiffs. This confirmation read as follows:

14 "I had agreed to waiver of rental until air-cond (sic) is fixed Cofa will not claim against the company for any losses."

15 and was followed by a signature and the date "9.6.88".

16 I could not accept the above as constituting serious evidence of a waiver by the plaintiffs in favour of the defendants. First of all, there was an affidavit by Mr Chua stating that the waiver related to Cofa and not to the defendants. Secondly, at the time of his handwritten confirmation of the waiver Mr Chua was no longer working for the plaintiffs and had no authority to enter into any commitments on its behalf. Thirdly, the wording of the waiver itself indicated that it related to Cofa rather than the defendants. It is relevant to point out here that the plaintiffs had sued Cofa for non payment of rent and Cofa had counterclaimed damages against the plaintiffs arising from the defects in the air-conditioning system, thus the reason for Mr Chua's statement "Cofa will not

claim against the company for any losses". Fourthly, it does not logically follow from the fact that there had been some doubt in 1986 as to whether the tenants of the premises would be the defendants or Cofa that once Cofa's tenancy ended and a new tenancy was taken by the defendants, the plaintiffs would consider themselves legally bound to give the defendants the benefit of any privilege they may have extended to Cofa.

17 Finally, the defendants themselves had not acted as if the plaintiffs had agreed to give them a waiver of rent until the air-conditioning system had been fixed. Well knowing that the air-conditioning system was defective from the time they took possession on 1 March 1987 they nevertheless paid rent from that date up till August 1988. Further, on 7 July 1988 the defendants wrote to the plaintiffs stating that they regretted to note that up to that date the air-conditioning system for the premises had not been fixed. The letter continued:

18 "We shall cease paying rentals until the air-conditioning system is rectified. We request you to refund us all the rentals we have paid."

19 The above wording was significant. It indicated an intention on the defendants' part to cease to pay rental. If a waiver had already been agreed to, the defendants would not have needed to state such intention. They would merely have had to record the agreement.

20 Accordingly the evidence presented did not support the contention that the waiver existed as early as June 1988. If a waiver was to be established it would have to be established from the other writing relied on, the letter of 7 December 1988. This letter read as follows:

21 "Dear Sirs,

22 UNITS #03-16/17, HIGH STREET CENTRE, 1 NORTH BRIDGE ROAD

23 I refer to the discussion held between Mr Ang Thian Soo, Mr Jimmy Lee and myself on Tuesday, 29 November 1988 in which it was agreed that the airconditioning in the above units, which are leased by yourselves, is not working properly.

24 I confirm having requested Colliers Goh & Tan Property Management Pte Ltd to have the problem identified and rectified (sic) as soon as it can possibly be done. In this connection, I shall be grateful if you would contract Mr Jimmy Lee (Tel.: 2232323) in order to arrange a suitable times (sic) for his staff to visit the premises and carry out the necessary work, as at present they can do nothing as they have no access to the premises which are kept locked.

25 I also confirm having agreed to waive the rental on the above units until such time as the airconditioning problem has been resolved.

26 I trust that you will concur with this arrangement and that you will be able to cooperate with Mr Lee in expediting this affair.

27 Yours faithfully,

28 Signed

29 R Hardy R Hardy

30 Chairman"

31 The affidavit evidence showed that an inspection of the air-conditioning unit took place on 10 December 1988 and the unit was found to be in working order, it simply required to be switched on. The plaintiffs did not carry out any repairs to the unit in December 1988. Although some time later the defendants disputed this fact, their subsequent correspondence seems to have accepted that after the inspection of the 10 December 1988, the air-conditioning system was in working order.

32 After carefully considering the language of the above letter, I was of the view that the waiver granted therein was for rental accruing from the date of the meeting until such time as the fault in the air-conditioning system had been dealt with. To construe the letter as stating that rental already paid by the defendants would be waived would have been to have given a much wider meaning to the words "I also confirm having agreed to waive the rental on the above units until such time as the air-conditioning problem has been resolved" than those words would bear in their ordinary construction. I thus agreed with the learned Deputy Registrar's reading of the letter.

33 I also accepted the argument of counsel for the plaintiffs that the wording of the letter made it crystal clear that any waiver had been granted on the basis that there was in fact a problem with the air-conditioning. Given the fact that the inspection carried out three days after the letter was written showed that there was absolutely nothing wrong with the air-conditioning, an effective waiver did not come into existence.

34 In the alternative, counsel for the plaintiffs contended that if any effective waiver had existed it was withdrawn by a letter dated 3 January 1989 from the plaintiffs to the defendants. In this letter the plaintiffs told the

defendants that as the problem with the air-conditioning system had been that the defendants did not switch the mechanism on, the defendants should be held liable for their unpaid rental to that date since it was no fault of the plaintiffs that either that the defendants had had no air-conditioning or that they had delayed taking action to rectify the situation.

35 It is an accepted legal principle that when one party to a contract waives his contractual rights thereunder without consideration, such waiver can be withdrawn at any time thereafter as long as the other party has not changed his position in reliance on the waiver. The case cited by the plaintiffs in support of this principle was *Ajayi v RT Briscoe (Nig) Ltd* < 1964 > 1 WLR 1326, a decision of the Privy Council. In that case, Lord Hodson delivering the judgment of the Board stated:

36 "The principle, which has been described as quasi estoppel and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will be raised in favour of the other party. This equity is, however, subject to the qualifications

37 (1) that the other party has altered his position,

38 (2) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position,

39 (3) the promise only becomes final and irrevocable if the promisee cannot resume his position."

40 In the present instance, it was my view that even if the waiver contained in the letter of 7 December had become operative, that waiver had been effectively retracted by the letter of 3 January 1989. This letter constituted reasonable notice of the plaintiffs' intention to resile from their promise. As no evidence was presented that at the time of the retraction the defendants had altered their position in any way in reliance on the waiver, it was capable of being withdrawn.

41 The evidence before me did not support the triable issues raised by the defendants. It was manifest from the correspondence between the parties that the defendants had unilaterally sought to impose on the plaintiffs an agreement as to a later commencement date for payment of rent. Not only had the plaintiffs failed to accept such proposal, the defendants themselves took conflicting positions as to when rent payments were supposed to start again. Initially they postulated a starting date of 1 February 1989. Later in purported acceptance of an offer they alleged was made by the plaintiffs, they agreed to 1 January 1989 as the relevant date. In their Defence to the action they went back to 1 February 1989 and then, in the oral arguments at the hearing of the appeal, the date put forward was 1 January 1989.

42 In my view the defendants kept wavering between the two dates because no later date had actually been agreed to by the plaintiffs. Thus in trying to pinpoint a date as an agreed date the defendants were guided at different times in accordance with different interpretations of the various letters which the parties wrote from 7 December 1988 onwards. Those letters which were exhibited to the various affidavits, did not disclose any agreement between the plaintiffs and the defendants on the postponement of the commencement date of the lease. What was plain was that the defendants were possessed of a blind

determination to construe every letter the plaintiffs wrote as acceding to the position of the defendants in complete disregard of the actual phraseology and purport of such letters.

43 In my judgment the defendants were not able to substantiate the triable issues for which they argued. I therefore dismissed their appeal.

44 < This does not merit reporting >

Judith Prakash JC

Philip Jeyaretnam for the plaintiffs
Genevieve Tan for the defendants
