

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 255

MC S14160/1993

Between

ELK Developments Pte Ltd

... Plaintiff

And

Ogilvy & Mather (Singapore)
Pte Ltd

... Defendant

GROUND OF DECISION

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ELK Developments Pte Ltd v Ogilvy & Mather (Singapore) Pte Ltd

[1994] SGHC 255

MC S14160/1993
Warren Khoo L H J
05 October 1994

1 Judgment:

2 Coram: Warren L H Khoo J

3 Grounds of Decision

4 This was an appeal from a decision of the learned district Judge Mr Quek Mong Hua ordering summary judgment for damages to be assessed on a claim by the plaintiffs for damages for wrongful termination of a tenancy agreement. I dismissed the appeal and now give my reasons.

5 The tenancy agreement, dated 21 April 1992, was for the lease of a maisonette for a two-year term starting from 20 April 1992. It followed the expiry of a previous tenancy agreement dated 18 April 1990 for a similar term commencing 20 April 1990. On 1 July 1993, during the currency of the second tenancy, the defendants served a three-months' notice on the plaintiffs purporting to terminate the tenancy on the ground that the defendants' employee, Peter Wilken, was being relocated to Hong Kong.

6 The termination prior to the completion of the full term of two years was prima facie wrongful. The defendants' defence was that there should have been a "diplomatic clause" in the tenancy agreement, i.e. a clause allowing them to terminate in the event that their employee Wilken was ordered out of Singapore by the government or transferred out of Singapore by the company.

7 It is common ground that in the first tenancy agreement, there had been such a clause. The defendants contended that this was omitted by mistake in the second tenancy agreement. The plaintiffs, on the other hand, contended that there was no mistake at all.

8 The evidence relating to the negotiations for the second tenancy agreement is as follows. In a letter of 14 April 1992, Mr Lee, the defendants' group finance director, wrote to the plaintiffs purporting to record an agreement for the renewal of the tenancy at the rent of \$4,700 with a diplomatic clause. On 15 April, the plaintiffs replied saying that there was no such agreement. They said the rate should be \$4,700 without the clause and \$4,900 with. According to Miss Eng for the plaintiffs, after these terms were communicated to the defendants, Lee orally instructed one Pamela Ang, the plaintiffs' accounts and administrative executive, to prepare a new tenancy agreement with a monthly rental of \$4,900, with the diplomatic clause. This was confirmed by a letter dated 16 April 1992 from the plaintiffs, enclosing the draft tenancy agreement reflecting these terms for execution by the defendants. On 20 April 1992, the defendants wrote to the plaintiffs confirming their agreement to the rental of \$4,900 with the diplomatic clause.

9 However, Miss Eng deposed in her affidavit that, on the same day, she was orally instructed by Lee to prepare a tenancy agreement with a monthly rental of \$4,700 without the diplomatic clause. The plaintiffs acted upon this

instruction and handed over an amended draft tenancy agreement to the defendants. This was executed by the defendants on 21 April 1992. In his affidavit, Lee denied having made the alleged oral instruction to amend the tenancy agreement. However, there was no dispute that the defendants signed the amended tenancy agreement, providing for a rental of \$4,700 without the diplomatic clause. Nor was there any dispute that the defendants paid the deposit and subsequent monthly rents on the footing of a \$4,700 per month rent.

10 The defendants' case

11 In their amended defence filed on 4 January 1994, the defendants pleaded that the true agreement of the parties was that there would be a rental of \$4,900 with a diplomatic clause. They pleaded that they signed the tenancy agreement in the belief, contrary to the fact, that it embodied this agreement. They pleaded that the tenancy agreement was signed under a mutual mistake of fact. They counterclaimed for rectification on the basis of these allegations.

12 In argument before me, defendants' counsel put the case of mutual mistake in this way. He said that the defendants were mistaken in thinking that the agreement had incorporated a diplomatic clause, and that that the plaintiffs had accepted their proposal of \$4,700 with such a clause; on the other hand, the plaintiffs were mistaken in thinking that the defendants wanted a tenancy agreement without the clause. He said in fact there was no meeting of minds, the parties were not *ad idem*. He said that there were two possible remedies: one, rescission on the ground of mutual mistake, and, two, rectification on the ground that the tenancy agreement as signed did not incorporate the true agreement of the parties.

13 Without going in any depth into the arguments as to whether a case of non est factum or mutual mistake could be made out, I was impressed by the fact that the second tenancy agreement as signed had been allowed to run for fifteen months (out of a total of 24 months) before the defendants raised these questions. Both rescission and rectification are equitable remedies. Whatever reason there might be for the long delay in raising the questions, there is the maxim that equity aids the vigilant. I could not see the defendants being in any position to persuade the court at the end of the day to grant them these remedies after they had sat on their rights (if rights there be) for such a long time. On this ground alone, I considered the defendants' case as quite hopeless. I therefore dismissed the appeal.

Warren Khoo L H J

Chen Chuen Tat for the appellants
Gregory Vijayendran for the respondents
