IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 91

Suit No 233 of 1991 and Suit No 306 of 1992

Between

Global Accent Trading Pte Ltd

… *Plaintiff*

And

Forum Development Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Global Accent Trading Pte Ltd v Forum Development Pte Ltd

[1994] SGHC 91

Suit No 233 of 1991 and Suit No 306 of 1992
Lim Teong Qwee JC
05 April 1994

1 **Judgment:**

2 Coram: Lim Teong Qwee JC

3 GROUNDS OF JUDGMENT

4 By a lease dated 27 February 1990 made between Forum Development Pte Ltd as landlord and Global Accent Trading Pte Ltd as tenant the landlord let and the tenant took the premises known as units #B1-45, 46 and 47 of "Forum Galleria" at 583 Orchard Road for a term of 3 years from 19 March 1990 to 18 March 1993 at a monthly rent of $14,931 and a monthly service charge of $1,659 for the purpose of a European cafe selling French pastry, Italian gelato and other cafe items. The tenant entered into possession but by its solicitors' letter dated 13 February 1991 it gave notice to rescind the lease with immediate effect and left the premises altogether in July 1991. In Suit No 233 of 1991 the tenant claims rescission of the lease and return of $381,020.50 paid for rent and service charge and for deposit under the lease and other reliefs for innocent misrepresentation as one of the alternatives to fraud. In Suit No 306 of 1992 the landlord claims arrears of rent and damages for wrongful repudiation of the

lease and it was agreed that the claim in Suit No 306 of 1992 be treated as a counterclaim in Suit No 233 of 1991.

5 Representations

6 In para 3 of the statement of claim it is alleged that in about February 1990 the landlord by its agent Evelyn Chan orally represented to the tenant the then intention of the < landlord > : (a) that the < landlord > would pull down "the Wall" before the end of 1990; (b) that in place of "the Wall" glass panels would be erected to enable pedestrians walking along the walkway in between "Forum Galleria" and Orchard Road to have view of the premises on the basement level of "Forum Galleria"; and

7 (c) that further a staircase giving access to pedestrians from the said walkway to the basement level of "Forum Galleria" would be erected or constructed by the < landlord > at the horizontal mid-point of the glass panels. "The Wall" was a parapet stone wall lying roughly parallel to Orchard Road between the pedestrian mall and the sunken mall which is part of Forum Galleria. The premises are at the level of the sunken mall so that they are partially hidden from the view of pedestrians on the pedestrian mall by the stone wall.

8 Paragraph 3 of the defence gives another version of the alleged representation but there was clearly no difference of any substance and counsel for the landlord in his closing submissions said that the landlord admitted the representations in para 3 of the statement of claim. Para 4 of the defence says:

9 "The said representations were statements of intention or statements as to the future and not statements of fact."

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10 A statement of intention undoubtedly involves a representation as to the existence of the intention which is a fact and it is as well that Mr Wong did not pursue this ground of defence. The substantial defence was in para 14 which says:

11 "The representations made by the said Evelyn Chan and set out in paragraph 3 hereof were made in good faith and truly and accurately reflected the intentions of the < landlord > up to the time the said lease was entered into."

12 The wall works i.e. pulling it down and replacing it with glass panels and constructing a staircase for access were in fact completed towards the end of 1991 by which time the tenant had given notice to rescind the lease and had vacated the premises. These works were part of major works of additions and alterations to Forum Galleria described in the letter from the landlord's architects RSP Architects Planners & Engineers dated 19 December 1988. Page 1 of this letter is at 1PB-3 and page 2 at 1PB-9. The wall works are at item 9.

13 Date lease entered into

14 Paragraph 2 of the statement of claim says:

15 "On or about 27th February 1990 the < tenant > and the < landlord > entered into a tenancy agreement in which, inter alia, the < landlord > agreed to let the premises known as Unit #B1-45, 46 and 47 on the Basement Level of `Forum Galleria' for a period of 3 years (`the Agreement')."

16 This is expressly admitted by para 2 of the defence. Paragraphs 4 and 8 of the statement of claim say:

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17 "4. Induced by and in reliance upon the faith and truth of the < landlord's > said representations, the < tenant > entered into the Agreement with the < landlord > .

18 8. In fact the < landlord's > said representations were false ... in that the < landlord > never intended to carry out and perform the said representations ...."

19 to which the landlord pleaded by paras 8 and 14 of the defence:

20 "8. The < landlord > has no knowledge of the matters stated in paragraph 4 of the Re-Amended Statement of Claim and puts the < tenant > to strict proof thereof."

21 Paragraph 14 has been set out in full above. There is no other statement in the defence referring to any of the allegations in para 4 of the statement of claim. Paragraph 8 of the defence is clearly in breach of O 18 r 13(3) of the Rules of the Supreme Court. However, no objection to it was taken at any time. As to the truth or falsity of the representations the issue on the pleadings is whether they were true or false when the lease was entered into. The "said lease" referred to in para 14 of the defence is the "Agreement" referred to in para 2 of the statement of claim as stated in para 3 of the defence and is the lease dated 27 February 1990. This is at BA-7/40. On the pleadings there was no issue as to when the lease was entered into. It was alleged in para 2 of the statement of claim that it was entered into "on or about" 27 February 1990. That was clearly a reference to the date of the lease. This allegation as noted above is admitted by the landlord. There is no other statement in the defence as to any other date either by reference to the day, month and year or to any event. Both parties adduced evidence as to the events leading to the making of the lease and in their

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written submissions both counsel addressed the question of when the lease was entered into as if it was in issue. In all the circumstances I think it is right that I ought to consider it as if it was in issue.

22 Mr Wong submitted that the relevant date should be either 22 January 1990 which is the date of the tenant's acceptance of the landlord's offer or 2 February 1990 which is the day the tenant returned to the landlord the lease signed by it but not signed yet by the landlord. As to 22 January 1990 his submission is that by that date the 4 essential terms for an agreement for a lease had been agreed. The 4 essential terms are the identity of the lessor and lessee, the premises, the commencement and duration of the term and the rent and other consideration.

23 It does not necessarily follow that because the 4 essential terms have been agreed that an agreement for a lease has been concluded. An obvious instance is where the parties are negotiating other terms and there is no intention to be bound until agreement on all the terms is reached. Another is when the parties do not intend to be bound until the happening of some event which has not happened yet. But it is necessary in this case to see what the offer is. It is in a letter dated 18 January 1990 at 1PB-10/13. It is an offer to reserve the premises to be leased. Upon acceptance a deposit of $16,590 is payable. Clause 9 says:

24 "CONDITIONS

25 This offer is made strictly subject to the following:-

26 A personal guarantee of directors is required to be signed by all principal directors/officers of your company. (Deleted)

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27 You must execute and return to us within one (1) week of the receipt of the Tenancy Agreement from our solicitor together with your cheque in payment of the balance security deposit and the fees and costs and duty referred in clause 8.00 hereof. If you fail to sign and return the Lease Agreement to us as aforesaid we shall be entitled to forfeit the sum of $16,590.00 paid under clause 6.01 of this letter and thereafter we shall be released from all obligations to reserve the above premises for you and neither of us shall have any claim against the other under the terms hereof."

28 It is also necessary to see what the acceptance in the landlord's printed form says. It is at 1DB-45A. It requests the landlord to reserve the premises and to forward a copy of the lease for perusal and execution. It goes on to say:

29 "I/We forward my/our cheque for $16,590.00 as reservation fee and agree that upon confirmation by the Board of Owners that the said premises are to be leased to me/us, the Owner may deposit the cheque and hold the proceeds thereof as part payment of the deposit required under the Lease. I/We agree that if I/we do not execute the Lease and/or fail to take up tenancy in accordance with its terms, the Owner shall be entitled to forfeit the security deposit."

30 It seems to me that the lease is only concluded either when the lease is executed by both the landlord and the tenant or when the tenancy is taken up (as by entry into possession) but that if the tenant defaults the deposit may be forfeited. The tenant may have altered its position on 22 January 1990 to the extent that it had put itself on risk to lose the deposit of $16,590 but that is not the case as pleaded. The case for the tenant is that it had altered its position by entering into the lease and this did not take place until later.

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31 As to 2 February 1990 Mr Wong's submission is that by that date the tenant had signed the lease and made all payments it was required to do.

32 On receipt of the tenant's acceptance at 1DB-45A the landlord issued a letter dated 23 January 1990. It is at 1DB-48. It not only called for payment but also called for a bank guarantee for the equivalent of 3 months' rent and service charge in the form provided. The tenant was given until 30 January 1990 to return the lease signed by it and to comply with the requirements as to payment and the guarantee. The guarantee is at 1DB-51 and is dated 2 February 1990. Thomas Dorn the managing director of the tenant said that he received the letter late on 24 January 1990 and he told Soon Su Lin of Richard Ellis (Pte) Ltd that he did not have enough time to get cheques from the tenant's bank. He was concerned with the 30 January 1990 deadline as he did not want to lose the deposit. He said he received the guarantee from the bank on 3 or 4 February 1990 and he delivered the lease signed by the tenant and the cheques and guarantee to the landlord on 5 or 6 February 1990. He said he knew the date he signed the lease on behalf of the tenant from notes in his calendar. The calendar was not produced and why he should record the date of signing rather than the date of attending at the landlord's office to deliver the lease would require some explanation but he was not asked and he gave none. Evelyn Chan said that the lease was returned to her by the tenant on 2 February 1990. It had been signed by the tenant but not by the landlord yet. She could remember the date from her notes but these were not produced. Soon Su Lin wrote a letter to the landlord dated 30 January 1990. This is at 1DB-50 and in it she confirms the extension of time to Friday 2 February 1990.

33 On the evidence I find that the tenant returned the lease, made the payments and delivered the guarantee to the landlord on 2 February 1990. However, this is not the end of the matter. The guarantee is only for one year.

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The form of guarantee provided by the landlord is not among the very large number of documents tendered but it would have been unlikely that a one year guarantee would be acceptable for a 3-year lease. There is a letter from the bank dated 6 February 1990. This is at 1DB-53. By this letter the bank agreed in accordance with the usual practice among banks to extend the guarantee for one year each time for up to two years altogether. That would cover the entire duration of the term of the lease less about a month or so. There is a receipt stamp of the landlord on it with the date 15 February 1990. By letter dated 16 February 1990 which is at 1DB- 54 the landlord gave notice to the tenant that it would on 19 February 1990 deliver possession of the premises "pursuant to clause 7(a) of the < lease > ". I think the bank's letter of 6 February 1990 was delivered to the landlord on 15 February 1990 and when that had been done the landlord agreed to the lease coming into effect and proceeded to sign it (if it had not been done earlier) and to date it 27 February 1990 and caused it to be stamped on 1 March 1990. There was no evidence as to when the letter at 1DB-54 was received or when possession was taken pursuant to it. There was no explanation as to why the landlord dated the lease 27 February 1990. I do not think that the lease was entered into on 2 February 1990 nor was there any intention on the landlord's part to do so then. I think that the lease only came into effect or was entered into on 27 February 1990 and I find accordingly.

34 Whether representations false

35 No director or secretary of the landlord whether past or present gave evidence. Muhammad Alabbar was the managing director at all material times and he and Geoffrey Foo the manager for Forum Galleria were responsible for the additions and alterations. Neither of them gave evidence. Alabbar was said to have returned to the United Arab Emirates but I cannot see that this alone is a sufficient reason for not being called to testify. There was no explanation at

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all for Foo not being called by the landlord. No minutes of directors' meetings were produced.

36 It was Evelyn Chan who gave evidence for the landlord. She was the leasing manager. She met Dorn and other representatives of the tenant on 27 December 1989 and gave them a presentation of the proposed additions and alterations. She showed them some drawings. Copies are at 6DB-30/33. The proposed glass wall is shown on 6DB-30 and she pointed it out to Dorn. She said she saw a programme of the works copies of which are at 5DB-19 and 5DB-24. 5DB-19 is a preliminary programme prepared by RSP in November 1989. It shows completion of major works including the wall works in mid November 1990. 5DB-24 is another programme prepared by RSP and dated 13 December 1989 following the receipt by them of comments from the other consultants. It shows completion of the wall works in mid December 1990. Evelyn Chan said she took instructions from Alabbar and Foo. From 5DB-19 she said she could tell that the landlord proposed to commence the works in May 1990 and "hopefully to finish by November 1990". She did not ask Alabbar or Foo to explain the programme. As at the date of her meeting with Dorn and other representatives of the tenant she had no idea whether the very first item of the works had been started. She did not bother to find out. She just took instructions. 5DB-24 was sent by RSP to the landlord with their letter at 5DB-25/26 dated 15 December 1989. The letter concludes:

37 "We would be pleased to discuss the above further if you have any queries or require adjustments to the allocated time periods."

38 She had no idea whether the landlord responded to that. 1DB-58 is a letter dated 9 March 1990 submitting an application to the authorities for the first time for approval for the additions and alterations but she did not know

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about that. At 5DB-35/36 is a letter dated 2 February 1990 from RSP to the landlord. This is what it says: "Further to our meeting on 30 January 1990, we attach the resultant tentative programme which has been revised (from the lst Programme of 13 December 1989) based on the latest inputs and adjustments.

39 Kindly note the following:

40 1. As the contractor is now required to endorse the application for permit to commence work, it appears that the contract must first be awarded to him before he endorses the application.

41 This was omitted from the previous schedule, which indicated that the award was only made on receipt of permit to commence works (previous standard procedure).

42 2. Structural BP submission must be made immediately after architectural BP submission, together with the AC's calculations so as to minimise the processing time for the Permit To Commence Works Application.

43 3. Due to the urgency to have as much of the work done before Christmas 90, Forum Development is proceeding to commence work without BP Approval. Ideally, in order to minimise any abortive costs due to unforeseen or new BP requirements, we advise that BP Approval should be first obtained.

44 At least, the work should commence after the second set of Written Directions from Building Control Division so that the developer is aware of the adjustments (and their cost and time implications) required before having done the work on site.

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45 4. M&E BP submissions to also be made as early as possible so that any unforeseen BP M&E requirements can be made known to contractor early and contractor's abortive work and abortive costs to client minimised.

46 5. This programme does not allow for changes in design that would affect the BP submission or the production of tender drawings and documents. If such changes occur, the programme shall be adjusted accordingly.

47 6. Option to be given to contractor at tender stage to offer alternative construction time. The contractor's submitted programme will verify whether the escalator's structure can be completed within 2 months after commencement of work.

48 7. As advised by Squire Mech at last meeting of 19 January 1990, Squire Mech will try to complete all drawings and documents by mid April to be vetted together and incorporated into the main tender.

49 8. By copy to all parties, we seek all parties comments."

50 The programme attached is at 5DB-34 and is dated 30 January 1990. It shows practical completion at the end of March 1991. Evelyn Chan said no one drew her attention to the letter. She saw it for the first time in court the day she was giving evidence. She said nothing about the programme at 5DB-34. She said that she assured or promised the tenant before the lease was returned to her on 2 February 1990 that the stone wall would be down by the end of December 1990. There was no evidence that she did anything about the programme showing that the additions and alterations would not reach the stage of practical completion until 3 months later at the end of March 1991. If she had a copy of the programme or had seen it she would have noticed the completion date as in

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the case of the two earlier programmes. Either she had seen it or had received instructions on it from Alabbar or Foo and had done nothing about it or she had not seen it and had received no instructions on it. Other than this the only evidence she gave relevant to the intention of the landlord was that the wall works were in fact completed at the end of 1991.

51 Vivien Heng an architect with RSP said that the landlord wanted to complete the works by September 1990 but RSP had advised it was not possible. The earliest was mid November 1990 and this was subject to a design "freeze" i.e. no design changes and "intensive work from consultants". The preliminary programme at 5DB-19 was prepared on that footing. The revised plan at 5DB-24 dated 13 December 1989 was prepared following comments from the other consultants. On 30 January 1990 there was a meeting between RSP and the landlord. Following that meeting the letter at 5DB-35/36 dated 2 February 1990 was sent along with the programme at 5DB-34 dated 30 January 1990. This is her evidence:

52 "Q: 5DB-34. When contract period?

53 A: From August 1990.

54 Q: Completion?

55 A: End March 1991. I mean practical completion sufficient for application for TOP.

56 Q: CSC?

57 A: Certificate of Statutory Completion.

58 Q: Means?

59 A: Inspections by all relevant departments and works completed according to approved plans.

60 Q: End March 1991. Date stone wall down and glass wall in place?

61 A: Yes.

62 Q: 5DB-34 and 35. Sent to Forum Development?

63 A: Yes.

64 Q: 30/1/90. Earliest practical completion date for wall works end March 1991?

65 A: Yes. Estimate based on conditions prevailing then.

66 Q: 5DB-35. Para 2. #1 para 2 (read). Previous standard procedure?

67 A: Previously to apply for permit to commence works not required to obtain contractor's endorsement. Changed subsequently. After change means contract had to be awarded first before application could be made for permit to commence works or at least agreement in principle with contractor. To get permit could take 5 days to 1 week generally depending on nature of works. This case I allowed 2 weeks."

68 She said the contract was awarded only on 3 January 1991.

69 At 5DB-39 is another letter from RSP to the landlord this time marked for the attention of Alabbar. It is dated 14 February 1990. It says:

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70 "We refer to our Client/Consultant at RSP's office on 13 Feb 90 regarding the above.

71 Since we have received no comments from other consultants (LD/SM/RSP/SE,LE LES) before or at the meeting, the programme is deemed acceptable to the consultant team. We also record your in-principle acceptance of the new programme which was based on recent input by all parties.

72 By copy to all parties, we wish to highlight that this programme does not allow for any `float', in that should any consultant be unable to meet the revised dates therein, the delay would be reflected in a corresponding extension to the key dates unless this delay could be `absorbed' by another party's shortened time period.

73 In this case, the critical path is at both the Authorities processing and approval periods as well as the consultant's target datelines.

74 Therefore, by copy of this letter we appeal to all parties to employ their fullest efforts to ensure such datelines are meet (sic). Where further info is required in finalising the drawings/documents, it is the responsibility of the consultant to highlight this early for resolution by the relevant party so that the former will be able to meet the required date.

75 Where Client decisions/input are required, these must also be determined expeditiously.

76 With regards to the Authorities submissions, we have based the programme on the assumption that the Authorities will expediently process our applications and that there should not be any major unforeseen requirements.

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We assure you of our best efforts in pursuing expedient responses where appropriate."

77 Neither Vivien Heng nor any of the other witnesses called by the landlord gave any evidence on the contents of this letter. She said that after the programme at 5DB-24 was prepared in December 1989 there was a change. This is her evidence:

78 "Q: When 5DB-24 produced contemplated all renovation works would be carried out simultaneously?

79 A: Generally, yes.

80 Q: Subsequently changed?

81 A: Yes.

82 Q: Why?

83 A: Forum Development felt needed to minimise disruption so that shopping centre could function.

84 Q: How to be achieved?

85 A: Phasing works into separate stages.

86 Q: When first discussed?

87 A: Believe some time February 1990.

88 Q: 1PB-17/18. Para 1. Discussion 13/2/90. This date?

89 A: Yes.

90 Q: This letter. What phase wall works?

91 A: Phase 2.

92 Q: 1PB-18. #2.3?

93 A: Yes.

94 Q: When letter written projected completion date each phase?

95 A: No. Not into that detail yet.

96 Q: Wall works remained as phase 2?

97 A: Subsequently changed to phase 3.

98 Q: Reasons?

99 A: Client felt more important to renovate interior first so that shops could be tenanted out and external least important. So wall works pushed to last phase. All external works.

100 Q: When phasing for entire project finalised?

101 A: Around May 1990. Think then next programme produced."

102 There was an important meeting at RSP's office on 13 February 1990. By then it was known to Alabbar that the additions and alterations could not be completed until end March 1991 at the earliest. Phasing the works into separate

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stages was discussed. The wall works were to be in phase 2. No dates were mentioned but the inference is that phase 2 would commence after phase 1 "to minimise disruption" instead of executing the works "simultaneously" as Vivien Heng understood it. By May 1990 the wall works as well as all external works were placed in phase 3 and to be carried out last.

103 If there was any intention at any time to complete the wall works by the end of 1990 it would have faded into nothingness by the time the meeting on 13 February 1990 was over if not by 30 January 1990 when the programme at 5DB-34 was prepared. Alabbar and Foo did not testify. The closest to the controlling mind of the landlord was Evelyn Chan's evidence that the landlord proposed to carry out additions and alterations works (including the wall works) from May 1990 and based on the first programme at 5DB-19 prepared in November 1989 (which was a preliminary programme) hopefully to finish by November 1990. On the evidence before me I find that there was no intention on the part of the landlord to complete the wall works before the end of 1990 at the time or immediately before the lease was entered into. I accordingly find that the representations were false.

104 Materiality and Inducement

105 In Smith v Chadwick (1) Lord Blackburn in the House of Lords said at p 196:

106 "I think that if it is proved that the defendants with a vew to induce the plaintiff to enter into a contract made a statement to the plaintiff of such a nature as would be likely to induce a person to enter into a contract (emphasis added), and it is proved that the plaintiff did enter into the contract, it is a fair inference of fact that he was induced to do so by the statement."

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107 I respectfully agree. There is also this passage in Halsbury's Laws of England (2) which I think is a correct statement of the law: "Questions of law and fact. It is a question of law whether any representation is capable of being construed as material, and also whether there is any evidence of actual inducement. Subject to these questions being answered in the affirmative, both inducement and materiality are prima facie issues of facts, and neither can be presumed as a matter of law."

108 (1) Whether the representations were material

109 The premises are partially hidden from the view of pedestrians on the pedestrian mall. There is a letter from RSP to the Drainage Department of the Ministry of the Environment dated 12 May 1988 at 1DB-14. These are the relevant passages:

110 "We submit herewith our drawing no. PSD/1 to 3 indicating the proposed lowering of the stone wall by 450mm. The new top level of the stone wall will be +106.20 instead of +106.65 as approved. This also means that the new top level of the wall will be 165mm below the flood level of 106.365 RL as indicated in your letter of 19 November 1984 (ENV(D)564/019), a copy of which is enclosed for your easy reference.

111 We have formally submitted our application for the proposal together with other alterations to the building to BCD via FSB on 26 April 1988 under reference (P)3254/88.

112 As conveyed to you in the telephone conversation, the aim of the proposal is to make the shop units in the Basement sunken mall of the development more clearly visible from the Orchard Road Pedestrian Mall. At

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present, they are hardly visible because of the aforesaid parapet wall blocking the view from the Orchard Road pedestrian mall and consequently business in these shops is very poor. Our clients reckoned that the situation could be remedied and the shop units would become more rentable if they are more visible to the pedestrians using Orchard Road pedestrian mall."

113 The landlord had applied to the authorities for permission to lower the stone wall by 450mm to make the shop units in the basement sunken mall more clearly visible from the pedestrian mall. The premises are in the basement sunken mall. The letter speaks for itself. In the event permission was refused and the landlord decided to change the material of the stone wall to glass for visibility without lowering its height. This is what Dorn said of the stone wall and the tenant's business:

114 "Q: In shop?

115 A: Could not go inside. Could not look inside.

116 Q: Noticed anything?

117 A: Not many pedestrians in basement around that place.

118 Q: Why pedestrians? Important?

119 A: Naturally. We asked for pedestrian traffic. Prerequisite.

120 Q: Why?

121 A: Our customers instinct buyers. Spur of moment. Don't plan to go to cafe.

122 Q: From unit moved to Orchard Rd?

123 A: Yes.

124 Q: Orchard Rd. Noticed anything?

125 A: Noticed lot of pedestrian traffic in front of Forum Galleria.

126 Q: Apart from that?

127 A: Yes. Noticed obstructing wall.

128 Q: Obstructing wall?

129 A: When downstairs in basement noticed no people in basement at side of shop. When upstairs on Orchard Rd saw very heavy pedestrian traffic. There and then we realised all passersby could never see shops downstairs in basement.

130 Q: Why could not see?

131 A: Because there was this wall."

132 and later:

133 "Q: What happened at meeting?

134 A: We explained our business. Also said needed human traffic and Evelyn Chan told us conditions of leasing 3 units. She mentioned charges, monthly charges. Told us very high standard of fitting out shops required. Told us also we would need to deposit 6 months' rental, pay 1 month's rent in advance

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at all times. We also said had look and not much traffic. She said they in front of renovations. Would be upgrading of complex Forum Galleria. Said wall would be removed and replaced by glass panels, staircase would be built in centre of it and whole basement would be opened up to Orchard Rd. Would be done by 1990. We would therefore have no problem as far as exposure concerned to Orchard Rd."

135 The stone wall was clearly bad for business. It was to be replaced by a glass wall of the same height. That would make for an improvement. In addition a staircase would be constructed to give access to the premises directly from the pedestrian mall. When the wall works are completed the premises would certainly be better for business especially the tenant's business. The tenant was planning to take a lease for a term commencing in the early months of 1990. The wall works had not been carried out yet. An important question was when they would be. It was represented to the tenant that it was the landlord's intention to complete the wall works by the end of 1990. Undoubtedly all the statements as to the nature of the wall works and the intention to complete them by the end of the year were capable of being construed as being and were of such a nature as would be likely to induce a person to enter into a lease for 3 years. I find that the representations were material.

136 (2) Whether the tenant was induced to enter into the lease

137 At her first meeting with Dorn Evelyn Chan said she gave a presentation of the additions and alterations including the wall works. This is her evidence:

138 "Q: What discussed?

139 A: Tom Dorn keen to lease #B1-45/47 of Forum Galleria for European cafe. I asked his experience, especially food retail experience, financial position, expansion plans, items of food and retail prices. Gave presentation on proposed renovations to Forum Galleria.

140 Q: Proposed renovations. What you told him? A: Reconfiguration of second storey, relocation of escalators, construction of new stairs and link bridges, new lightings, new floor tiles, new railings, widening of corridors, new entrance to Forum Galleria.

141 Q: Mention of external works?

142 A: Yes. Installation of new clock tower, removal of brick wall and replace with glass wall.

143 Q: Brick wall?

144 A: Along pedestrian mall.

145 Q: Where mall?

146 A: Next to sunken mall of Forum Galleria.

147 Q: Mall parallel to Orchard Rd?

148 A: Yes.

149 Q: Showed any drawings to Tom Dorn?

150 A: Yes."

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151 and later:

152 "Q: Any time prior to lease being returned you assured or promised plaintiff brick wall would be down by end December 1990?

153 A: Yes. I mentioned date."

154 All this was given in examination in chief.

155 The lease was to be for 3 years. The form of lease was delivered to the tenant in January 1990. It was entered into in February 1990. The representations were made in December 1989 and were not withdrawn or corrected before the lease was entered into. The completion date of the wall works was certainly critical. The assurance or promise could only have been given to encourage or to induce the tenant to enter into the lease and I find that the representations were made with a view to induce the tenant to enter into the lease which the tenant did in fact enter into. This is sufficient for an inference to be drawn that the tenant was in fact induced. Further Dorn said this in his evidence:

156 "Q: This meeting?

157 A: Like presentation of what going to happen with renovations. Shown plans and sketches. John Corrigan, my daughter and I. I think Soon Su Lin. Yes, she was there. And Evelyn Chan. In coloured artist's drawings. Told before showing all this. Evelyn Chan said would all be done by 1990. Very impressive.

158 Q: All done by 1990. Asked her when specifically?

159 A: No. Only said this very important to us because until wall gone we don't see any customers there. I said that because earlier we made decision to take lease in spite of wall. We were prepared for bad business until such time wall gone which was by 1990. In my own mind I was hoping for October/November 1990.

160 Q: Relied on statement of Evelyn Chan?

161 A: Yes. All looked so real. Not suspecting anything this point of time."

162 I accordingly find that the tenant was induced to enter into the lease by the landlord's representations.

163 Rescission

164 I was not satisfied that the representations were made negligently or fraudulently and I accordingly gave judgment for the tenant for rescission of the lease for innocent misrepresentation and ordered the return to the tenant of the rent and service charge and the deposit paid together with interest at 6% per annum from the date of commencement of proceedings in Suit No 233 of 1991 and dismissed the landlord's counterclaim or claim in Suit No 306 of 1992.

Lim Teong Qwee JC

Version No 1: 29 Oct 2026 (23:45 hrs)

Govindarajalu Asokan for the plaintiff
Terence Wong for the defendant
