IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1996] SGCA 68

CA 77/1996

Between

Batshita International (Pte) Ltd

… *Appellant*

And

Lim Eng Hock Peter

… *Respondent*

GROUNDS OF DECISION

Arbitration — Stay of court proceedings; Evidence — Admissibility of evidence; Landlord and Tenant — Covenants

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

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Batshita International (Pte) Ltd v Lim Eng Hock Peter

[1996] SGCA 68

CA 77/1996
Karthigesu JA; L P Thean JA; Yong Pung How CJ
05 November 1996

1 This appeal arises from an order of the High Court referring to arbitration the dispute or disputes that had arisen in connection with the tenancy agreement of premises known as #16-03 Horizon Towers (West), 29 Leonie Hill, Singapore (the flat) dated 24 February 1995 pursuant to the arbitration agreement contained therein and s 7 of the Arbitration Act (Cap 10) and staying the subordinate court action begun by the appellants (the landlord) for arrears of rent of the flat and stamp duties on the tenancy agreement payable by the respondent (the tenant).

2 The judgment of the High Court is reported at [1996] 2 SLR 741. At the conclusion of the appeal we dismissed it and now give our reasons for doing so. They differ from the reasons given by the learned judicial commissioner in his judgment.

3 The landlord had resisted the tenant`s application to the High Court on two grounds. The first was that the tenant had taken a step in the proceedings after entering an appearance. The learned judicial commissioner found no merit

in this contention and disallowed it. The landlord has not appealed against this part of the decision.

4 The second ground was that there was no dispute or difference between the landlord and the tenant in connection with the tenancy agreement. It was submitted to the learned judicial commissioner that the covenants in a tenancy agreement were independent of each other and even if there had been a breach of one of the landlord`s covenants (which there was not) it would not prevent the landlord from entering judgment for the arrears of rent which by cl 1 of the tenancy agreement was `payable monthly in advance and clear of all deductions on the first day of each calendar month`. In fact the tenant did not deny that he was in arrears for the last five months of the tenancy of the flat and if, as the tenant contended, the landlord was in breach of any of the landlord`s covenants, the appropriate remedy was for the tenant to counterclaim in the subordinate court action.

5 The tenant has put in on affidavit that he had been the tenant of the landlord`s predecessor in title of the flat, one Paviter Singh Bajaj (Paviter) from 1 February 1990, initially for a period of two years which on expiry had been extended annually until 31 January 1995. In November 1994 Paviter had inquired whether the tenant would be renewing the tenancy for another year. The tenant had informed Paviter that he would, only if Paviter rectified and repaired certain defects in the flat. The following was the list of defects:

6 (a) the water leakage to one of the toilets which was so severe that the wall adjacent to the hall to the left of the main door was permanently saturated with water. The water leakage, further, rendered the toilet unusable;

7 (b) the water leakage problems in the kitchen;

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8 (c) the door to the kitchen toilet was severely rotting through;

9 (d) the moisture had stained the walls and there was evidence of mildew around the electric switches.

10 Paviter had agreed to have the above defects rectified and repaired.

11 Shortly after this agreement was reached with Paviter, the tenant learnt that Paviter had sold the flat, subject to the tenancy, to the landlord. He immediately contacted Paviter and told Paviter that he would not now be renewing the tenancy of the flat for a further year as the landlord was not a party to the agreement to rectify and repair the defects in the flat as agreed between him and Paviter.

12 The tenant, however, did not vacate the flat on 31 January 1995 but continued in occupation and paid the rent and other charges previously paid to Paviter to the landlord from 1 February 1995. The transfer of the flat from Paviter to the landlord was effected on 10 January 1995.

13 A tenancy agreement prepared by the landlord and dated 24 February 1995 sent to the tenant for execution was not executed by him until August 1995. It appears that the tenant refused to execute the tenancy agreement until he got a firm promise out of the landlord that his complaints regarding the water leakages in the flat would be rectified and repaired before he would execute the tenancy agreement. He states in his affidavit of 17 January 1996 that he got this promise only in July 1995 after the landlord had visited the flat. Relying on the landlord`s promise that the water leakages in the flat would be rectified and the damage repaired, the tenant had then executed the tenancy agreement. Accordingly, the tenant`s position is that there was a pre-condition to the

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tenancy agreement. But the landlord had failed to perform that pre-condition and when the landlord showed no signs of sending workmen to do the work, the tenant stopped paying the rent after 31 August 1995.

14 The landlord`s position is equivocal. We note from one of the landlord`s solicitors` letters exhibited (dated 28 November 1995) that the landlord claims that it `had not at any time agreed to carry out any defects alleged` and in another (dated 20 December 1995) the landlord complains that the tenant refused access to the landlord `to complete the re-tiling works at the toilet of the said premises`. Be that as it may, the principal contention of the landlord is founded on the submission that the covenants contained in a tenancy agreement operate independently of each other and on cl 3(a) of the tenancy agreement which provides that the tenant shall `pay the said rent and origin charge (sic) at the time and manner aforesaid without any deduction except as agreed`, that is to say by reference to cl 1, monthly in advance on the first day of each calendar month the full amount reserved by the tenancy agreement shall be paid as there was no agreement as to any deductions.

15 It seems to us that the learned judicial commissioner accepted the legal validity of the landlord`s submissions for he says at p 745B of the report of his judgment:

> *Whilst covenants in a lease have been regarded in common law as independent and not inter-dependent, ie no mutuality exists with regard to their performance between the landlord and tenant with the result that rent continues to be due and payable by a tenant notwithstanding a breach and there being an absence of legislation in Singapore which alters the common law, nonetheless, a judicial inroad has been made into the common law`s archaic position on the issue.*

16 He then referred to the House of Lords` decision in ***Liverpool City Council v Irwin*** [1977] AC 239 which was a case of the Liverpool City

Council`s duty to repair and maintain the common parts of a 15-storey building over which the City Council had retained control and in respect of which the City Council had not undertaken any such obligation with the tenants whilst letting out maisonettes in that building. The House of Lords held that in so far as the common parts were concerned there had to be implied an easement for the tenants and their licensees to use the stairs, lifts and other parts of the building over which the City Council retained control (the common parts) and that the nature of the contract with the tenants and the circumstances required that the obligation of keeping the common parts of the building in good repair fell on the landlords, namely, the Liverpool City Council. In our judgment the facts and circumstances of ***Liverpool City Council v Irwin*** are far removed from the facts and circumstances of this case such that any principle of law that can be extracted from that case would not be directly applicable to this case.

17 However, the learned judicial commissioner applied the principles for implying a covenant in a lease as explained in ***Liverpool City Council v Irwin*** to this case. At pp 745 and 746 he said:

> *In the present case, the tenancy agreement signed in February 1995 was silent as to the obligations of the defendants (the landlord) to carry out repairs. [This is not correct, strictly, as cl 3(c) of the tenancy agreement is a tenant`s covenant to repair, fair wear and tear excepted, and cl 4(c) is a landlord`s covenant to repair.] The defendants had submitted that the plaintiff (the tenant) cannot rely on any oral agreement as it is extraneous to the tenancy agreement and inadmissible under s 94 of the Evidence Act and that none of the exceptions allowing admissibility thereunder apply. The plaintiff had submitted otherwise. Even if evidence of the oral agreement is admissible, which is a matter for determination elsewhere, there is no reason why the considerations enunciated in* ***Liverpool City Council v Irwin*** *should not be applied in Singapore showing there was in law an implied obligation in the tenancy agreement on the part of the defendants as landlords to repair for reasons of `business efficacy` ...*

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18 I therefore found for reasons of `business efficacy` that ***in law*** (the learned JC`s emphasis) `a dispute or difference` exists between the plaintiff and the defendant as provided by cl 5(j) of the tenancy agreement.

19 With the greatest respect to the learned judicial commissioner we were unable to accept this reasoning. Firstly, the landlord`s submissions (see paras 9 and 10 above) which the learned judicial commissioner appears to have accepted are fallacious. It is settled law that a tenant`s right of equitable set-off of claims arising under a tenancy agreement such as unliquidated damages for a breach of the landlord`s covenant to repair against accrued rent clearly exists. See ***British Anzani (Felixstowe) Ltd v International Marine Navigation (UK) Ltd*** [1980] 1 QB 137. Further, the English Court of Appeal held in ***Connaught Restaurants Ltd v Indoor Leisure Ltd*** [1993] 2 EGLR 108 that the simple expression `without any deduction` is insufficient in itself to exclude the tenant`s equitable right of set-off. We set out below the headnote which is explicit enough without referring to the judgment. The lease contained a provision that the rent was to be paid `without any deduction`. It reads:

> *Clear words are needed to exclude a tenant`s remedy of an equitable right of set-off. The word deduction is not a term of art, but a useful and flexible word heavily dependent upon the context in which it is used; if that context provides no guidance, it cannot be described as a clear word. The simple expression `without any deduction` is insufficient in itself, in the absence of any context suggesting the contrary, to exclude the tenants` equitable right of set-off. Added words of exception or qualification are relevant to the construction of the phrase, but they, too, are subject to the general requirement of clarity. In seeking to exclude a tenant`s equitable right of set-off, the draftsman should do it explicitly: see Lewison* ***Drafting Business Leases.***

20 The learned judicial commissioner made only a passing reference to the oral agreement we have referred in para 8 above. We have also noted the equivocal position the landlord took on the oral agreement in para 9 above.

There obviously was a dispute firstly whether the landlord had orally agreed to repair and rectify the defects the tenant complained of as a pre-condition to the tenant executing the tenancy agreement and secondly, whether if there was such an agreement, the landlord had some of the works done and was prevented by the tenant`s lack of co-operation from having the works completed. This in our judgment was the crux of the matter.

21 The landlord had contended that evidence of the oral agreement was inadmissible under s 94 of the Evidence Act and the learned judicial commissioner had left it at that saying it was `a matter for determination elsewhere`.

22 In our judgment the oral agreement does not purport to contradict, vary, add to, or subtract anything from the terms of the tenancy agreement. It is on the evidence of the tenant, a separate oral agreement constituting a condition precedent to his executing the tenancy agreement. It comes fairly and squarely within para (c) of s 94 of the Evidence Act which is an exception to the rule that an oral agreement cannot contradict, etc a written agreement which has already been proved and admitted in evidence. It reads:

> *the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.*

23 If there was, as indeed there was, a dispute as to whether there was a separate oral agreement constituting a condition precedent to the tenant executing the tenancy agreement such dispute was ***connected*** with the tenancy agreement and accordingly was referrable to arbitration in accordance with the provisions of the Arbitration Act.

24 Clause 5(j) of the tenancy agreement reads as follows:

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> *If any dispute or difference shall arise between the landlord and tenant touching any clause, matter or thing whatsoever herein contained or the operation or construction thereof or any matter or thing in any way* ***connected*** *(our emphasis) with this agreement then in every such case the dispute or difference shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Act (Cap 16) or any statutory modifications thereof.*

25 And s 7(1) of the Arbitration Act reads:

> *If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings against any other party to the arbitration agreement or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.`*

26 Subsection (2) provides that the court may stay the proceedings if the court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration.

27 It was for these reasons that we dismissed the landlord`s appeal and not for the reasons given by the learned judicial commissioner in his judgment reported at [1996] 2 SLR 741.

28 ***Appeal dismissed.***

Karthigesu JA
L P Thean JA
Yong Pung How CJ

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S Asogan (R Raman & Co) for the appellants
Ling Tien Wah (Helen Yeo & Partners) for the respondent

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