IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 117

OS 237/1996

Between

Lim Eng Hock Peter

… Plaintiff

And

Batshita International (Pte) Ltd

… Defendant

GROUNDS OF DECISION

Arbitration — Agreement

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

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Lim Eng Hock Peter v Batshita International (Pte) Ltd

[1996] SGHC 117

OS 237/1996
Amarjeet Singh JC
06 June 1996

1 The plaintiff applied by originating summons on 13 March 1996 that matters in dispute in a tenancy agreement dated 24 February 1995 between him and the defendants which contained an arbitration clause be referred to arbitration pursuant to s 7 of the Arbitration Act (Cap 10) and that further proceedings in MC Suit No 21401 of 1995 commenced in the subordinate courts by the defendants relating to the said matters be stayed pending the determination of the arbitration. I so ordered. The defendants being dissatisfied now appeal. The background of the plaintiff`s application is briefly as follows.

2 The plaintiff was a tenant of 29 Leonie Hill #16-03 Horizon Towers (West) Singapore 0923 (the premises). The defendants were his landlords. By action commenced on 12 December 1995 in the subordinate courts, the defendants claimed rent due from the plaintiff to the defendants under the tenancy agreement in the sum of $28,500 from the months of August to December 1995 and other miscellaneous amounts. The premises were let for one year under the said agreement, from 1 February 1995 to 31 January 1996 at a rent of $5,700 which comprised of $2,750 for the premises, $2,550 for furnishings and fittings and $425 for maintenance and services. The plaintiff

filed an appearance on 18 December 1995. The defendants filed an application for summary judgment on 22 December 1996. On 17 January 1996 the plaintiff applied in the subordinate courts to stay the defendants` action on the ground that the tenancy agreement had an arbitration clause and he wished to refer the matter for arbitration in accordance with s 7 of the Arbitration Act (Cap 10) (the Act). The plaintiff`s application was supported by his affidavit. The defendants filed an affidavit in reply. The subordinate courts have no jurisdiction to make the order under s 7 of the Act read with s 2 as the application under s 7 has to be made to the High Court. Section 7 of the Act states:

> *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.*

3 On hearing of the plaintiff`s application to stay, the action was stayed pending the plaintiff`s application to the High Court. The defendants` application for summary judgment was adjourned sine die.

4 In the application before me, defence counsel raised two issues. They were:

> (1) whether the plaintiff had pursuant to s 7 of the Act taken any other step in the proceedings after appearance; or
>
> (2) whether there was any `dispute or difference` between the defendants and the plaintiff as landlord and tenant touching any clause matter or thing contained in the agreement.

5 Clause 5(j) of the tenancy agreement provides:

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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 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 10) or any statutory modifications thereof.*

6 The defendants` stand was that the plaintiff had taken a step in the proceedings as a result of which arbitration proceedings would not be available to him. In the event he had not taken a step, the plaintiff`s application should nevertheless fail as no `dispute or difference` arose in law between them touching any clause or matter in the said agreement. I shall briefly discuss each issue.

7 ***`Step`***

8 Defence counsel averred that by paras 3 to 12 of the plaintiff`s affidavit dated 17 January 1996 filed in the MC suit, the plaintiff was in fact defending the application for summary judgment and had thus taken a step in the proceedings (S/C No 16451 of 1995). Having read the said affidavit in the proceedings below as exhibited, I am unable to agree with defence counsel. The plaintiff in fact filed the affidavit in support of his S/C No 786/96 to stay the defendants` action and the said paragraphs relate predominantly to the second issue, ie as to whether there was a `dispute or difference`. Indeed the defendants` affidavit dated 29 January 1996 (as prefaced by paras 2 and 3) is itself a reply to the plaintiff`s application in that regard. That the contents of the plaintiff`s affidavit can also be construed somewhat as answering the defendants` claim cannot be interpreted as meaning that the plaintiff is defending the separate application for summary judgment filed by the defendants.

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9 In my opinion, no step is taken by a defendant in a suit or action in order to stay the proceedings brought against him in that suit or action if he issues a summons-in-chambers to stay the proceedings and supports the same by affidavit showing what the question or issue in dispute is one which ought to be referred to arbitration and if necessary, uses the affidavit to incidentally show cause against the plaintiff`s summons-in-chambers for summary judgment. In the circumstances, I find that the plaintiff did not take any other step after entering his appearance in the suit against him in the subordinate court.

10 ***`Dispute or difference`***

11 The plaintiff`s grievance was that the plaintiff had been a tenant in the premises since February 1990 pursuant to an earlier tenancy agreement under a previous landlord. After the defendants purchased the premises in 1994, they took over the tenancy agreement as landlords. By the end of 1994 the physical condition of the premises had deteriorated as follows:

> (a) the water leakage to one of the toilets was so severe that the wall adjacent to the hall to the left of the main door of the demised premises was permanently saturated with water; the water leakage rendered the toilet unusable;
>
> (b) there was a water leakage problem to the kitchen;
>
> (c) the door to the kitchen toilet was severely rotting through; and
>
> (d) stained walls due to moisture and evidence of mildew around electric switches.

12 The plaintiff stated that he was not prepared to renew the tenancy which was due to expire on 31 January 1995 in the circumstances. The condition of the premises was drawn to the defendants` attention and the defendants agreed to rectify and repair the demised premises and as a result of the said oral

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agreement, the plaintiff thereafter renewed the tenancy dated 24 February 1995 for another year. According to the plaintiff, the defendants thereafter procrastinated and/or refused to carry out the repairs and rectifications whilst the plaintiff continued to pay the rent which payments the plaintiff stopped from July 1995 as conditions had further deterriorated as described. In November 1995 the defendants had appointed a contractor to do the repairs and rectifications but the repairs were not carried out. The plaintiff`s counsel submitted that the oral agreement for repairs and rectifications had never really been disputed by the defendants. In the circumstances, he submitted the plaintiff refused to further pay rent as it was certainly not worth paying the large rent in view of the poor physical condition of the demised premises. The plaintiff exhibited photographs to his affidavit as evidence of the state of disrepair of the premises.

13 Counsel for the defendants submitted that the leakage to the toilet had been repaired except for the plastering and re-tiling of the walls and blamed the plaintiff for preventing the defendants` contractors from completing the works as he was not at home when the contractors tried to contact him which allegations had been denied by the plaintiff. Defence counsel further submitted that the defenants were only told of the repairs required in August 1995 which the plaintiff again disputed. Defence counsel submitted that in any case ***in law*** under ***cl 3(a)*** of the tenancy agreement, the rent was to be paid without any deduction except as agreed and there was no agreement allowing the defendants to withhold the rent. There was also no covenant in the tenancy agreement by the landlord to repair. He submitted that even if the defendants conceded that repairs were required the tenants` and landlords` covenants in the lease are regarded as independent in common law, ie the tenants` covenant to pay rent is thus independent of the landlor`s covenant to repair so that rent continues to be

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due and payable notwithstanding the landlords` breach. Therefore he submitted the tenant could not hold the rent with impunity. His claim if any lay in damages for breach of covenant or recovery of damages as such after carrying out the repair and having paid for them on behalf of the landlord. Counsel concluded that as rent was thus payable, there was no `dispute or difference` between the plaintiff and the defendants over the non-payment of the rent and the plaintiff`s application to refer the matter to arbitration was flawed.

14 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.

15 The House of Lords in ***Liverpool City Council v Irwin*** [1977] AC 239 decided that, where necessary, the court could imply terms to the contract if they had not been stated in the contract. In the ***Liverpool City Council*** case, the City Council rented out a high-rise block of flats in which the lifts, staircases and rubbish chutes in the building were neglected and misused and required much attention and repair although it was found on the facts that some alterations and repairs had been done. No tenancy agreement existed between the Council and the tenants except for a memorandum described as `Conditions of Tenancy` which imposed obligations on the tenants when they took possession of a flat but not on the Council as landlord. The House of Lords declared that the court could imply terms to the contract where there were none. The test the court held was whether the insertion of the term was necessary to give the contract `business efficacy` such that if its absence had been pointed out at the time, both

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parties (assuming them to be reasonable ones) would have agreed without hesitation to its insertion. The court then implied an easement for the tenants and their licensees to use the stairs, a right in the nature of an easement to use the lifts and an easement to use the rubbish chutes and stated that the Council as landlord must be subject to a contractual duty to `take reasonable care to keep in reasonable repair and usability the premises and the building`. The court went on to state that the subject matter of the lease (high rise block) and the relationship created by the tenancy demand, of their nature, some contractual obligation on the landlord. I may add that on the other hand earlier in Canada, a statutory inroad was made introducing the doctrine of mutuality of covenant into the law of landlord and tenant: Landlord and Tenant Act Ontario, RSC 1970 C 236, s 9 Residential Tenancies Act, Stats NB 1975 CR 10.2 s 11(3). Some states in Au stralia allow rent withholding where the landlord breaches his covenants: Residential Tenancies Act 1980 (Vic) ss 97-103, 105; Residential Tenancies Act 1978-81 (South Australia) ss 22, 42, 46.

16 In the present case, the tenancy agreement signed in February 1995 was silent as to the obligations of the defendants to carry out repairs. The defendants had submitted that the plaintiff 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 inadmissible, which is a matter for determination elsewhere, there is no reason why the considerations ennunciated 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`. There is little doubt by parity of reasoning that if the absence of the defendants` obligation to repair the premises

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had been pointed out to the plaintiff and the defendants they would as reasonable persons have agreed without hesitation to its insertion. It is common knowledge that Horizon Towers, a luxury residential block in the city centre like so many other luxury blocks, command high rentals. It would hardly be `business efficacy` for the landlord to insist that he has no duty to repair the flat he has rented out (or at that rented out at premium rates) as the tenancy agreement does not impose an obligation on him to do so. The principle of `business efficacy` in my opinion applies as such to a single unit the interior of which falls into disrepair and the tenant is greatly inconvenienced as much as where the use is of common property in a block of flats as in ***Liverpool City Council v Irwin*** . It would be wrong and unjust, in my opinion, to expect a tenant to keep on paying the rent and sue for damages, enduring in the meantime discomfort from the state of disrepair or to have the repairs carried out and again later to expect him to involve himself in time and money in unnecessary litigation. Such a course would also be inimical in an international business centre such as Singapore where there are a large number of expatriate tenancies. In my opinion, the archaic position in common law referred to is therefore unsuitable to local circumstances and its effect is best circumscribed by the application of the said principle of `business efficacy` in the present case.

17 I therefore found for reasons of `business efficacy` that ***in law*** `a dispute or difference` exists between the plaintiff and the defendant as provided by cl 5(j) of the tenancy agreement. Whether a tenant`s complaint as to repairs required are justifiable, will in every case depend on the circumstances and will be a question of fact in each case. One test will be the quality of the accommodation provided and the rent payable in respect thereof. Here the premises rented was a luxury flat with a high rental value. However, I make no finding of facts. That is not required in the application before me. The

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complaints of the plaintiff as listed together with the photographic evidence and additionally the plaintiff`s averment that there was an oral agreement before the signing of the present tenancy agreement to carry out the repairs (which oral agreement if established would impose an express duty to effect the repairs) and the stand taken by the defendants, all collectively show that ***in law*** and prima facie ***, in fact*** a reasonable `dispute or difference` exists between the plaintiff and the defendant in respect of the tenancy and the matter should be sent for arbitration.

18 I therefore found for the plaintiff and ordered that:

> (1) pursuant to s 7 of the Arbitration Act (Cap 10) and an arbitration clause in the agreement dated 24 February 1995, the matters in dispute above be referred to arbitration;
>
> (2) MC Suit No 21401 of 1995 be stayed pending the determination of arbitration;
>
> (3) that the plaintiff initiates arbitration proceedings within two weeks hereof.
>
> (4) defendants to pay the plaintiff costs of this application fixed at $2,000 forthwith.

19 ***Application allowed*** .

Amarjeet Singh JC

Ling Tien Wah (David Lim & Partners) for the plaintiff
S Asogan (R Raman & Co) for the defendants

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