

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 107

DCA No 55 of 1996

Between

Hong Joo Company Pte Ltd

... Plaintiff

And

Junqiang Furniture
Tay Cheng Kiong
Tay Cheng Kok
Cheong Choon Hua (t/a
partners in Junqiang Furniture)

... Defendant

GROUNDS OF DECISION

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Hong Joo Company Pte Ltd v Junqiang Furniture and Others

[1997] SGHC 107

DCA No 55 of 1996
T S Sinnathuray J
28 April 1997

1

Judgment:

2 1 This District Court appeal was

heard on 4 February this year for one morning and was adjourned parheard for further

hearing today. The main reason why this case got parheard was because counsel for the

appellant (hereinafter referred to as plaintiff) raised an argument in the appeal touching

on s 6A of the Civil Law Act, Cap 43. Counsel for the respondents (hereinafter referred to

as defendants) on that occasion stated that s 6A was not canvassed before the learned

magistrate. So, today I have heard full arguments in this appeal.

3 2. Two technical points were taken

for the defendants. One was that the plaintiff should not be allowed to raise an argument

touching on s 6A. First, it was said that this was not pleaded as referred to in O
18 r 8.

Secondly, it was contended as I have just said that the matter was not canvassed
in the

court below. I have ruled against the defendants on both these points. It is for
the

simple reason that law does not have to be pleaded. And consequently, that in
the

circumstances of this appeal as the learned magistrate founded his decision on
a point

which touched on s 6A I find that it was not a new point at all. So, with those
two

technical matters out of the way I can refer to the main appeal.

4 3. The facts are not in dispute.

They have been adequately set out in the grounds of decision of the learned magistrate and

I will adopt them for the purpose of this appeal. Stated shortly, one issue which was

canvassed in the lower courts and which is not an issue before me is whether there was an

oral agreement between the parties, the plaintiff (the landlord) and the defendants (the

tenants) for the rental of the tenancy for the months of March and April 1995 to be set

off from the security deposit. For the purpose of this appeal, counsel for the plaintiff

accepts the finding of fact made by the learned magistrate that there was such an oral

agreement. That leaves two issues that were canvassed in the lower courts which are now

the subject matter of appeal.

5 4. The first issue is whether the
defendants have adduced sufficient evidence to rely on the oral agreement, that
is to say

whether they come within exception (d) in s 94 of the Evidence Act, Cap 97,
which I shall

refer to shortly. The second issue is whether there was consideration for the oral agreement. As I have come to a clear decision on the first, I propose not to say anything

on the second of the two issues, the subject of consideration. Now, I can deal with the

first issue that I have referred to.

6 5. Section 94(d) of the Evidence

Act reads as follows:

7 94 Where the terms of any such
contract, grant or other disposition of property, or any matter required by law to
be

reduced to the form of a document, have been proved according to s 93, no

8 evidence of any oral agreement or

statement shall be admitted as between the parties to any such instrument or their

representatives in interest for the purpose of contradicting, varying, adding to, or

subtracting from its terms:

9 Provided that -

10 ...

11 (d) the existence of any distinct

subsequent oral agreement, to rescind or modify any such contract, grant or disposition of

property, may be proved except in cases in which such contract, grant or disposition of

property is by law required to be in writing, or has been registered according to the law

in force for the time being as to the registration of documents;

12 In substance it provides that when
the terms of any contract required by law to be reduced to the form of a
document have

been proved, then no evidence of any oral agreement can be admitted as between
the parties

relating to that contract. However, under exception (d), the existence of a
distinct

subsequent oral agreement to rescind or modify the contract may be proved
except in cases

where the contract itself is required by law to be in writing.

13 6. It is in this context that
reference was made to s 6A(d) of the Civil Law Act which I must now state. It
provides as

follows:

14 6A. No action shall be brought
against -

15 ...

16 (d) any person upon any contract

for the sale or other disposition of immovable property, or any interest in such property;

17 unless the promise or agreement

upon which such action is brought, or some memorandum or note thereof, is in writing and

signed by the party to be charged therewith or some other person lawfully authorised by

him.

18 7. The learned magistrate on this

issue stated and I quote "It should be noted that there is no requirement that a

lease for a period of two years has to be in writing. Consequently, there is also no

requirement that any variation to the terms of the lease must also be in writing."

Then, he went on to say that "Under exception (d) in s 94 of the Evidence Act, the

defendants have to prove on the balance of probabilities, that there was distinct

subsequent oral agreement to modify the lease agreement", and he found that an agreement was in fact reached by the parties. So, it appears clearly in the grounds of

decision that he decided the case in favour of the defendants for the reason that there

was no requirement for this tenancy which was for a period of two years to have been in

writing. Consequently, as he said there was no requirement that the variation of that

tenancy agreement must also be in writing. It is in these circumstances that he allowed

parol evidence to be given and eventually decided the case in favour of the defendants.

19 8. Counsel for the defendants has

in his written submission said that in this case the learned magistrate was right in the

way he decided. The point made is that s 6A(d) of the Civil Law Act is not relevant to the

present case. Another point made was that the tenancy agreement does not come within s

6A(d) of the Civil Law Act; the argument was that s 6A(d) only dealt with the sale of

land. The submission was that the subsequent oral agreement did not concern any interest

in land. The oral agreement was a contractual matter, nothing to do with the interest in

land, and therefore it did not come within the ambit of s 6A of the Civil Law Act.

20 9. Reliance was also had on s 53(1)

of the Conveyancing and Law of Property Act, Cap 61. The point here was that under s 53 be

it under the old Act or the new Act the difference being one of three and seven years in

respect of leases that they must be by deed in the English language. The submission, as I

understand it, was that ‘deed’ was equated to ‘writing’. In other

words, under the old Act where a lease is for a period not exceeding three years,
then the

lease need not be in writing. On that basis it was argued, as the learned
magistrate had

decided, that the subsequent agreement need not also be in writing.

21 10. Finally, if what I have said

failed for the defendants, the defendants rely on the equitable doctrine of part

performance. Here, the argument was that, as pursuant to the oral agreement
certain monies

were paid in respect of GST for the rents for two months of March and April,
there had

been part performance by the defendants and the oral agreement was, therefore,
a valid

one.

22 11. Interesting as all these

arguments may be, I regret I cannot accede to them. In my view the learned
magistrate had

erred in law in coming to the decision that there is no requirement that a lease

for a

period of two years has to be in writing. Clearly, s 6A of the Civil Law Act had not been

brought to his attention for if it had been he would have addressed his mind to it which

provides in no uncertain terms that any contract for the sale, or other disposition of

immovable or any interest in such property must be evidenced by some memorandum or note

thereof in writing. Section 6A deals with more than just sale of land. In this particular

case, it being a tenancy agreement for the renting of immovable property it clearly falls

within the phrase "interest in such property" and thus a tenancy agreement, be

it only for two years, has to be evidenced by a memorandum or note thereof in writing.

Therefore, it will follow that any variation of it and any modification of it must also be

evidenced by a memorandum or note in writing.

23 12. Next, I do not accept the
submission that that oral agreement had created some kind of contractual right
independent

of and unconnected to the interest in property, i.e. the tenancy agreement.
Clearly, the

oral agreement inextricably deals with the variation of that tenancy agreement,
that is

the basis for that oral agreement.

24 13. Then again, I am satisfied that
the equitable doctrine of part performance has no application to the factual
matrix of

this case. That receipt which has been referred to as an act of part performance
is not

something that arose as a result of the oral agreement in the sense that it is
something

further to the oral agreement. In the context, it is indeed part of the oral
agreement and

not an independent act of performance, separate and distinct from the oral agreement. So,

I am of the view the doctrine of part performance does not apply to the facts of this

case.

25 14. For these reasons, I accept the

submission of counsel for the plaintiff that the oral agreement cannot be admitted in

evidence under exception (d) to s 94 of the Evidence Act for it does not fall within the

exception as provided in that section. On this issue alone, I will allow the appeal. There

will be judgment for plaintiff in the plaintiff's claim i.e. under paragraphs (a),

(b), (c) and under (d) costs to be taxed on a solicitor and client basis as provided in

the lease. Further, the costs of the court below are to be refunded to the plaintiff by

the defendants together with the usual consequential orders.

26 T S SINNATHURAY

27 JUDGE

28 Singapore, 28 April 1997

T S Sinnathuray J

K Anparasan (William Chai & Rama) for the appellant/plaintiff
Joseph Lopez (Bridges Choy & Lopez) for the
respondents/defendants
