

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 305

Suit No 432 of 1997, RA 255 of 1997

Between

Pontiac Marina Private
Limited

... Plaintiff

And

Richmall Holdings Pte Ltd

... Defendant

GROUND OF DECISION

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Pontiac Marina Private Limited v Richmall Holdings Pte Ltd

[1997] SGHC 305

Suit No 432 of 1997, RA 255 of 1997
G P Selvam J
21 November 1997

1

Judgment:

2 **GROUND OF DECISION**

3 This is an appeal from the decision

of Asst Registrar Miss Hoo Sheau Peng to Judge-in-Chambers. The decision relates to a

summary judgment for moneys due under a lease.

4 The plaintiffs were the landlords

and the defendants were the tenants of the premises which were part of a shopping centre.

The main part of the premises was used by the defendants as a food court.

5 The other parts were used for other businesses. The plaintiffs claimed various sums and applied for summary judgment. The

defendants resisted the application.

6 The defendants contended that they

signed a lease with the plaintiffs because the plaintiffs had told them that there would

be a great deal of human traffic in the shopping centre and that there would be many

people from the nearby office tower and that the shop space in the shopping centre would

be leased to high quality shops which would also attract people. It was further asserted

that these representations were part of the lease. They were not included in the written

lease, however.

7 The defendants further said that they spend about \$3.2million on fitting-out the premises for us as a food court.

8 It was further said by the defendants that after the shopping centre commenced operation, the level of human traffic

turned out to be low as the food court had very poor business and the defendants lost

money. Based on these facts it was contended that the defendants had a counterclaim which

far exceeded the plaintiffs' claim.

9 The Lease included the following provision :

10 "17.1 The tenant covenants to pay to the landlord promptly as and when due without demand, deduction, set-off, or counterclaim whatsoever all sums due and payable by the tenant to the landlord pursuant to

the provisions of this Lease, and covenants not to exercise or seek to exercise
any right

or claim to legal or equitable set-off.

11 17.8 The landlord shall not be

bound by any statements, representations or promises with respect to the
Shopping Centre,

or in respect of the premises, except as expressly set forth in this Lease and the

Agreement for Lease, as the case may be. The agreement between the landlord
and the tenant

is set forth herein and in the Agreement for Lease, and shall in no way be
modified by any

statements, representations or promises made prior to the signing of this Lease.
The

landlord does not expressly or impliedly warrant that the premises are or will
remain

suitable or adequate for all or any of the purposes of the tenant and all warranties
(if

any) as to suitability and adequacy of the premises implied by law are hereby

expressly

negatived."

12 The general rule that oral terms

cannot be relied in construing an agreement which by law must be evidenced in writing.

Additionally cl 17.8 precluded the defendants from relying on the alleged misrepresentations.

13 Further, it is a well recognized

rule that parties may contract out of their right to setoffs and cross-claims: See ***Hongkong***

and Shanghai Banking Corp v Kloeckner & Co AG [1989] 3 All ER 513. In cases

involving bills of exchange and time charterparties the rule is that setoffs and

cross-claims cannot be set up in summary judgment proceedings. Clause 17.1 was a valid

clause on the facts of this case alleged set off or counterclaim can stand in the way of

an application for summary judgment. Accordingly Asst Registrar Miss Hoo Sheau Peng

correctly applied cl 17.1 and gave judgment.

14 The defendants argued before me

that the Unfair Contract Terms Act prevented the operation of paragraph 17.1 of the lease.

I could not agree with them. The defendants were disentitled from availing themselves of

that Act because leases are excluded from it. See the First Schedule to the Act which says

that ss 2 to 4 of the Act do not extend to any contract so far as it relates to the creation of an interest in land. From time out of mind a lease has been considered to be

an interest in land. Further *Electricity Supply Nominees Ltd v IAF Group plc*

[1993] 1 WLR 1059 was to the point and against the defendants.

15 Accordingly I ruled that the

defendants had no leg to stand, and I dismissed the appeal.

16 The defendants then asked for an
absolute stay of execution based on the counterclaim. I decided against them
because since

I had ruled that they cannot raise a cross-claim in summary judgment
proceedings it would

be an internal antithesis to grant a stay to them. The defendants could not
indirectly

have that which the contract directly denied them. In effect 17.1 denied them a
stay of

execution.

17 Dated this 21st day of November

1997.

18 **G P SELVAM,**

19 **JUDGE**

20 *Solicitors: Wong Partnership*

Pontiac Marina Private Limited v Richmall Holdings Pte Ltd [1997] SGHC 305

21 *Allen & Gledhill*

G P Selvam J

Giam Cheng Han with Nanda Kumar for the plaintiffs/respondents
Tan Soo Meng with David Koh for the defendants/appellants
