IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 66

Suit 1632/1996, SIC 5946/1996

Between

Tan Seng Huat t/a Yew Huat Scaffolding Work

… *Plaintiff*

And

Golden Seal Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Tan Seng Huat t/a Yew Huat Scaffolding Work v Golden Seal Pte Ltd

[1997] SGHC 66

Suit 1632/1996, SIC 5946/1996
C R Rajah JC
18 March 1997

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 1. By a Building Agreement dated 16 October 1995, the Jurong Town Corporation (JTC) granted the Plaintiff a 2 year licence commencing on 1/6/94 to build and equip a factory for the purpose of manufacturing scaffolding and structural works on some land belonging to JTC. The Building Agreement also provided that:-

4 (a) the Plaintiff had to complete the building works and the installation of all equipment, fixtures and fittings so that the factory was completely fit for immediate occupation and operation within the said 2 year period i.e. by 31/5/96. < Clause 2(viii) >

5 (b) if the Plaintiff completed the building works to the satisfaction of JTC and had invested, inter alia, a minimum amount of $200/- per square metre of the said land on plant and machinery within the 2 year period, JTC would

grant the Plaintiff a lease of the said land for a term of 30 years commencing on 1/6/94. < Clause 4 >

6 (c) notwithstanding any default, JTC could extend the period for completion of the building and installation works beyond the 2 year period. < Clause 3(c) >

7 (d) if the Plaintiff failed to complete the building and installation works within the 2 year period or such extended period (time being of the essence), JTC had the right and power to re-enter and re-possess the said premises and terminate the said Building Agreement without any compensation to the Plaintiff. < Clause 3(b) >

8 (e) the Plaintiff could not sub-let any part of the said land or factory building thereon (collectively called the said premises) without JTC's prior consent in writing. < Clause 2(xx) >

9 2. By an agreement in writing contained in an undated Letter of Intent given by the Defendants to the Plaintiff and an undated Letter of Acceptance signed by the Plaintiff, the Plaintiff agreed to sub-let a part of the said premises to the Defendants for a period of 3 years at a monthly rent of $11,500/-. Pursuant thereto the Defendants issued the Plaintiff a cheque for $3,000/- dated 4/3/96 in payment of the deposit referred to in the Letter of Intent. The Letter of Intent and the Letter of Acceptance were both made on the letterhead of Ridge Properties Pte. Ltd., whose Ricky Ong was the estate agent who brokered this transaction.

10 3. The Plaintiff claims that:-

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11 (a) the sub-tenancy was to commence only 14 days after the temporary occupation permit (TOP) for the factory was issued. There is a provision to such effect in the Letter of Intent which was signed by the Defendants' employee and/or agent Mr. Siow Siok Hwa and bears the Defendants' company stamp.

12 (b) the Defendants' sub-tenancy was made subject to JTC's approval. There is a provision written in by Ricky Ong to such effect in the Letter of Acceptance which was signed by the Plaintiff and which also bears the Defendants' company stamp albeit affixed upside down.

13 (c) the Defendants later said they required a place to leave their machinery and asked the Plaintiff to allow them to use for this purpose, pending JTC's approval, part of the said premises to be sub-let to them. In anticipation of JTC's approval, he allowed them to do so as a gesture of goodwill. It was understood that if JTC's approval was not obtained, the Defendants would have to vacate the said premises.

14 (d) he has not cashed the $3,000/- cheque paid as a deposit or received any rent from the Defendants save for a tender of $12,500/- as rent for September 1996 made by the Defendants on or about 10/9/96 after the proceedings herein were commenced. He rejected this tender.

15 (e) the only payment received by him from the Defendants was a sum of $4,500/-. This was paid by the Defendants of their own accord as compensation for storing some I-beams at the said premises without his knowledge or consent.

16 (f) TOP for the factory building was issued on 30/7/96.

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17 (g) JTC refused to approve the Defendants' sub-tenancy and he informed the Defendants thereof in mid-August 1996 and told them to vacate the said premises but the Defendants refused to do so.

18 (h) he had not installed any equipment (i.e. plant and machinery) at the said premises by 31/5/96 or even by 16/8/96 and had failed therefore to comply with his obligations under Clause 2(viii) and Clause 4. He needed an extension of time to do so and asked JTC for it. JTC, however, refused to consider his request until the Defendants and some other unauthorised occupiers at the said premises vacated the said premises and gave him until 30/11/96 to get them to vacate.

19 (i) if the Defendants and these other occupiers did not vacate the said premises JTC would not grant the extension of time. There would then be a real risk JTC would re-possess the said premises under Clause 3(b) for breach of Clause 2(viii) and refuse to issue the lease pursuant to Clause 4 for non-compliance of the equipment investment requirement. If this happened, he would lose the benefit of the 30 year lease as well as the considerable amount of money he had spent on developing the said premises.

20 (j) if the Defendants and the other occupiers vacated the said premises by 30/11/96, he believed that JTC would grant him the necessary extension of time to comply with the equipment installation requirements. He could then get his 30 year lease and save his investment in the development of the said premises.

21 4. The Plaintiff therefore commenced this action on 2/9/96 to evict the Defendants and took out this present application before me for an interlocutory

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mandatory injunction that the Defendants be ordered to vacate the said premises by 30/11/96. He also commenced similar actions against the other occupiers who refused to vacate the said premises and applied in those actions (there were 2 such occupiers and hence 2 other actions) for similar interlocutory mandatory injunctions.

22 5. Ricky Ong has affirmed on affidavit in support of the Plaintiff's case that:-

23 (a) he informed both the Plaintiff and the Defendants that the sub-tenancy could only be effected after obtaining both the TOP for the factory as well as JTC's consent.

24 (b) he wrote on the Letter of Intent that the sub-tenancy would commence only 14 days from the date TOP was issued and on the Letter of Acceptance that the sub-tenancy was subject to JTC's approval.

25 (c) when the Defendants' Mr. Siow issued the cheque for the $3,000/- deposit, Mr. Siow asked him what would happen to the deposit if JTC did not give its approval. He told Mr. Siow that the deposit would be refunded to the Defendants and wrote this down on the Letter of Acceptance.

26 (d) Mr. Siow then signed the Letter of Intent and put the Defendants' company stamp on the Letter of Acceptance.

27 (e) the matters stated in (b), (c) and (d) above all took place on the same occasion.

28 6. The Defendants, however, claim that:-

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29 (a) their Mr. Siow negotiated for the sub- tenancy of part of the said premises with Ricky Ong, the Plaintiff's property agent, in early March 1996.

30 (b) the Letter of Intent was filled up by Ricky Ong in their Mr. Siow's presence after which Mr. Siow signed it. Mr. Siow, however, did not check its contents because he trusted Ricky Ong to ensure that everything was in order as Ricky Ong claimed to be an experienced property agent.

31 (c) Mr. Siow handed the $3,000/- cheque for the deposit to Ricky Ong at the time he signed the Letter of Intent. No Letter of Acceptance was given or shown to Mr. Siow at that time.

32 (d) Mr. Siow was not informed at that time that the sub-tenancy would be subject to JTC's approval.

33 (e) the Defendants were given a copy of the Letter of Acceptance only some days after signing the Letter of Intent. They did not check it at that time and only discovered much later that it was not addressed to them and that the Plaintiff had inserted a term that the sub-tenancy would be subject to JTC's approval. They also never affixed their company stamp on the Letter of Acceptance and did not know how it got there.

34 (f) in April 1996, Mr. Siow asked the Plaintiff if the Defendants could use the said premises to fabricate some items. The Plaintiff offered to rent some space for $6,000/- per month. The Defendants thereafter moved in sometime in April 1996. As they eventually used only three-quarters of the space originally required they sent the Plaintiff a cheque for $4,500/- as rent under cover of a letter dated 23/5/96. They say the Plaintiff thereby created orally and by conduct

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a tenancy of this area quite separately from that created in writing by the Letter of Intent and Letter of Acceptance.

35 (g) on 10/7/96 the Plaintiff informed their Mr. Siow that TOP for the factory was approved and that they could move in and that he would be collecting rent in 14 days time.

36 (h) the Defendants kept asking the Plaintiff for a written tenancy agreement but he kept delaying giving one. The Defendants are ready and willing to pay rent to the Plaintiff and have tendered such rent in the amount of $12,500/- for the month of September 1996 on or about 10/9/96 but Plaintiff refused to accept the same.

37 (i) in mid-August 1996 the Plaintiff informed the Defendants that JTC were objecting to the Defendants' occupation of the said premises. It was only then that the Defendants realised that something could be wrong and that they had been misled all along by the Plaintiff. Prior to that the Defendants had not been informed nor were they aware that JTC's consent for the sub-tenancy was necessary.

38 (j) the Defendants had expended time and money in moving into and relocating their operations at the Plaintiff's factory and would require some time to find suitable alternative premises and to move out.

39 (k) JTC have informed the Defendants that they would be allowed until 30/11/96 to vacate the factory.

40 7. On the Plaintiff's version of the facts he would be entitled to the interlocutory mandatory injunction he seeks but not if the Defendants' version

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is correct. It is not possible for the Court at this stage of the proceedings to determine which version is true. In the circumstances of this case it is appropriate therefore to look at where the balance of convenience would lie, and how the status quo would be affected if the interlocutory mandatory injunction sought by the Plaintiff is granted.

41 8. I accept the Plaintiff's contention as set out in paragraph 3(i) of this judgment that he runs a real risk of not having the 30 year lease granted and of JTC re-possessing the said premises if the Defendants and the other occupiers did not vacate the said premises by 30/11/96. This is because JTC had made it clear that they would not consider the Plaintiff's request for an extension of time until he cleared the said premises of the Defendants and the other occupiers by 30/11/96. Unless the Plaintiff obtains an extension of time under Clause 3(c), he has no chance of equipping the said factory within such extended period and thereby perform his obligations under Clause 2(viii) and Clause 4. Although JTC are not obliged to grant the Plaintiff the extension of time even if the Defendants and the other occupiers vacate by 30/11/96, there is a reasonable chance they will do so. Otherwise they might have simply refused the Plaintiff's request for an exension out of hand without saying they would consider it only if the Defendants and others vacated the said premises by 30/11/96.

42 9. I also accept therefore the Plaintiff's contention in paragraph 3(j) hereof that if the Defendants and others vacate the said premises by 30/11/96 there is a reasonable chance that the Plaintiff will obtain an extension of time sufficient to allow him to comply with the equipment installation requirements and thereby stave off the threat of re- possession, obtain the 30 year lease and save his investment in developing the land. All this will only be possible if the mandatory injunctions sought in this action and the other 2 actions the Plaintiff

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has brought are granted as the Defendants and the 2 other occupiers have refused to vacate the said premises. If no mandatory injunctions are granted and should JTC re-possess the said premises I also see little prospect for the Defendants and the other 2 occupiers being allowed to stay on especially as JTC have already refused to approve any sub-tenancy to them.

43 10. In the circumstances, whether the injunction sought herein is granted or not the Defendants are likely to have to vacate the said premises without their occupation thereof being approved or regularised. However, if it is granted, there is a reasonable chance that the Plaintiff will get the extension of time necessary to allow him to comply with the equipment requirements of Clause 2(viii) and Clause 4 and thereby avoid the spectre of losing the said premises. But if the injunction is not granted the Plaintiff faces a real risk of losing the said premises. In short, if the injunction is not granted it is essentially a lose-lose situation as far as both parties' prospects of occupation are concerned. However, if it is granted, the Plaintiff has a reasonable chance of saving his investment in the said premises and retaining possession thereof and the Defendants of moving back in (should they choose to do so) if they successfully defeat the Plaintiff's claims at the trial of this action.

44 11. Also the loss suffered by the Defendants should they win at trial after having to move out because of the injunction is a loss they would have to suffer even if the injunction is not granted should JTC re-possess the said premises and require them to move out. Furthermore, the Defendants' loss would be confined essentially to costs of relocating. The Plaintiff's loss should no injunction be granted and he wins at the trial, would be the loss of the benefit of the 30 year lease and all the money he has spent in developing the said premises should JTC re-possess the said premises of which there is a real risk. Such loss

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would be avoided if the injunction is granted and is also far greater than any loss the Defendants might suffer.

45 12. The Defendants also argue that the injunctive relief sought by the Plaintiff being equitable relief, the Plaintiff should not be granted such relief regardless of where the balance of convenience may lie as he does not come with clean hands. In the present case the Court will be unable to say whether the Plaintiff's hands are clean or not until after the trial of the action. It is precisely for this reason that the balance of convenience has to be weighed and considered.

46 13. The Plaintiff's applications for interlocutory mandatory injunctions against the other 2 occupiers in the other 2 actions were heard by me at the same time as the application herein. I found the circumstances in these 2 other cases to be essentially the same as those in this case. The balance of convenience therefore lies in favour of granting the interlocutory mandatory injunction sought against the Defendants in this action and similar injunctions in the other 2 actions.

47 14. I also find that the status quo which the Court ought to seek to preserve in this case is that where the Plaintiff has a reasonable chance of obtaining the extension of time and thereby the opportunity to keep the benefit of the 30 year lease and possession of the said premises rather than that advanced by the Defendants, namely, the Defendants remaining in occupation of part of the said premises. The granting of the interlocutory mandatory injunction sought by the Plaintiff would help preserve the first-mentioned status quo.

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48 15. For the reasons set out above I granted the Plaintiff, on the usual undertaking as to damages, an interlocutory mandatory injunction ordering the Defendants to vacate the said land and factory by 30/11/96 or such extended time as JTC may allow for the Defendants to vacate and ordered that the costs of the application be costs in the cause. I made similar orders in the Plaintiff's 2 other actions against the other occupiers.

49 Dated the 18th day of March 1997.

50 C.R. RAJAH

51 JC

C R Rajah JC

Winnifred Gomez (S T Ong & Co) for the plaintiff
Joan Lim (Chan Kam Foo & Associates) for the defendants

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