

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 77

Suit 807/1995

Between

Singgulf Pte Ltd

... Plaintiff

And

The Great Eastern Life
Assurance Co Ltd

... Defendant

GROUND OF DECISION

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Singgulf Pte Ltd v The Great Eastern Life Assurance Co Ltd

[1997] SGHC 77

Suit 807/1995
Choo Han Teck JC
27 March 1997

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Judgment:

2 GROUNDS OF DECISION

3 1. The Defendants are the owners of the Orchard Emerald Centre. They
made a written

offer dated 18 June 1987 to lease the basement of the Orchard Emerald Centre
to the

Plaintiffs.

4 2. The offer letter specified the lease period to be three years with an option to

extend to four years. It also provided that the lease would commence one day after TOL in

respect of Orchard Emerald Centre is granted or at the expiry of the three months fitting

out period whichever is the later . The rent was to be \$4 per square foot of the premises.

The total area to be leased was 8,704. The rent, therefore, came to \$34,816.00.

It also

provided that the offer was subject to the Plaintiffs signing the Lease Agreement in the

landlord's standard form. The Plaintiffs accepted the offer and signed the acceptance on

18 July 1987. However, the Lease Agreement was signed more than a year later, on 17

October 1988.

5 3. In the Lease Agreement, the \$4 per square foot rent was changed into \$2.60 per

square foot for rent and \$1.40 per square foot for maintenance and service charges. The

total monthly rent and maintenance/service charges thus remained at \$34,816.00.

6 4. The material difference between the Lease Agreement and the letter
of offer was that

in the Lease Agreement the term of lease was provided as: Period of three (3) years

commencing at the expiry of the fitting out period whichever is later . It defined fitting

out period as simply, 3 months .

7 5. It was not disputed that the Plaintiffs paid rent (including maintenance
and service

charges) from May 1989. However, they claim that rent should only be payable from

17

November 1989 when the TOL (Temporary Occupation Licence) for the basement was granted.

Thus, they claim an over payment of six months' rent.

8 6. The basis of the Plaintiffs' claim in this regard was that the TOL was
granted _____ in

respect of the Orchard Emerald Centre basement (the leased premises) only on

16

November

1989. It was the Plaintiffs' case that the term in the offer letter dated 18 June 1987 was

applicable and binding on the parties. The Defendants, naturally, disputed this and it was

their case that the term of the lease started as set out in the Lease Agreement, namely at

the expiry of the fitting out period which they say was on 12 January 1989. Nonetheless,

they had allowed the Plaintiffs to pay from 15 May 1989.

9 7. It is necessary to refer to some salient but undisputed facts. Shortly after 17

October 1988 when the Lease Agreement was signed, the building plans were submitted to the

Building Authorities (on 22 October 1988) and these plans were approved on 20 April 1989.

The permit to commence work was issued on 7 September 1989. There was no allegation that

the Plaintiffs were negligent or at fault for not obtaining approval for those plans sooner.

10 8. Between the acceptance of the letter of offer and 7 September 1989, the Plaintiffs

were already on site but they were clearly having difficulties because the building plans

were not yet approved - even as late as March 1989. Hence, Tan Ean Toon, the managing

director of the Plaintiffs testified that they could only do preliminary work such as

clearing debris and old fittings. However, the architect CP Lee testified that work could

and did proceed without approval but that was done at the risk that the building

authorities may ask them to rebuild if the plans were subsequently not approved. CP Lee

was the Defendants' architect for the entire building but was appointed by the Plaintiffs,

at the Defendants' recommendation, for work in respect of the basement.

11 9. The Defendants were clearly not pleased with the progress of the fitting out work

and were constantly pressing the Plaintiffs to complete. This was evidence in a letter

dated 30 March 1989 written by Tan Ean Toon to the Defendants. He referred to the causes

of delay at the work site and pointed out that building approval had not yet been given.

It ended with the following paragraph: We regret that the site work cannot be completed

any earlier so that your rental income for the basement can commence. However, in view of

our pleasant working relationship, we are prepared to commence rental with effect from 15

May 1989. We request that the rental (commencing 15 May'89) would only be payable upon

business commencement. The Defendants agreed to accept that rental was to begin from 15

May 1989 but rejected the proposal that payment be made only after business had commenced.

10. Thus, thereafter, the Defendants pursued the Plaintiffs for rent from May 1989 and

payments were made accordingly, but were frequently late. On one occasion, the Defendants

had to sue in the District Court in DC Suit 6325 of 1989 for payment of the rent for

October 1989. Default judgment was obtained and the Plaintiffs subsequently paid _____ up. _____ In

their judgment in DC Suit 6325 of 1989 the Defendants also obtained an order for

possession of the premises. That judgment had not been set aside.

13 11. Consequently, the Defendants required the Plaintiffs to regularise
the continued

occupation by signing a fresh lease agreement. This request was evidenced in their letter

of 19 June 1990 to the Plaintiffs. The Plaintiffs replied by letter of 5 July 1990 asking

that the previous lease be allowed to run its course, but this was not accepted by the

Defendants. Hence, a fresh agreement was signed by the parties on 12 July 1990.

14 12. The Plaintiffs now claim that this agreement of 12 July 1990 was executed under

duress. Tan Ean Toon's evidence was that he felt that he could not afford to lose the

lease and, therefore, succumbed to the Defendants' threat to repossess the premises. He

deposed that the Defendants could carry out their threat and recounted an incident in

which his food stall operators and customers were prevented from entering the premises. It

was not disputed that the Defendants' action in this single incident was in response to

the Plaintiffs' failure to pay rent. When rent was paid later that morning access into the

premises was again permitted.

15 13. In respect of the Plaintiffs' claim for \$208,896.00 being the
overpayment of rent

from May 1989 to November 1989 it is necessary to establish when the lease of
17 October

1988 commenced.

16 14. Counsel for the Plaintiffs submitted that the term of lease in the
Lease Agreement

omitted the words, the lease term will commence one day after TOL in respect of _____ Orchard

Emerald is granted or . These words were found in the letter of offer. He further submitted that the TOL referred to must mean the TOL of the basement.

17 15. Counsel for the Defendants submitted that the reference to TOL was
expressly to the

TOL of the Orchard Emerald and not to the basement. The former TOL was granted on 2 August

1988. He further argued that there was therefore no need to insert that part into the

Lease Agreement when it was signed in October 1988. He admitted that the words, _____, whichever

is later appearing in the Lease Agreement were otiose.

18 16. The Defendants' contention, therefore, was that the Lease Agreement clearly stated

that the lease should commence at the expiry of the fitting out period which was defined

as 3 months . However, the Agreement did not specify when those three months begin.

Ordinarily, it would begin on the date of the agreement, that is 17 October 1988, but it

was clear that the Plaintiffs were given possession of the basement before that date to

begin work.

19 17. Although there was no formal declaration as to when the 3 months fitting out period

began, and notwithstanding that building plans were not yet approved or permission granted

to start work, the Plaintiffs had effectively begun work prior to the 17 October 1988. In

any event, no attempt was made at all to point out the discrepancy between the Lease

Agreement and the letter of offer.

20 18. I find, therefore, that both the parties did not really rely on the terms of the

Lease Agreement as to when the lease should commence. What happened, in fact, was that

after the letter of offer was accepted in July 1987, the parties were keen to have the

food court ready and operational as soon as possible. It was to the benefit of both.

However, the fitting work took much longer than the parties expected. It was, therefore,

natural that the Defendants pressed the Plaintiffs to complete the work.

21 19. As a result, the Plaintiffs offered to pay rent beginning from May 1989 but payable

only when the TOL for the basement was granted. This proposal was rejected by the

Defendants and eventually, the Plaintiffs made payment from May 1989.

22 20. The circumstances set out above, indicate, very strongly, that the parties had

varied the terms of the Lease Agreement. If the lease was strictly complied with then the

Defendants ought to have given a two weeks written notice specifying the date upon which

the demised premises would be made available for fitting out. This was to be found in

clause 5 of the Lease Agreement. On the evidence, no such notice was given and parties

proceeded on the faith of the general terms of the letter of offer from 18 July 1987 until

the Lease Agreement was signed in October 1988.

23 21. I find, therefore, that the agreement to pay rent from May 1989 to be a variation

of the terms. I do not accept the Plaintiffs' contention that the term as set out in the

letter of offer representing the true term. Apart from the fact that there was before me,

no application to rectify the Lease Agreement, the facts show that too much water had

flowed under the bridge, so to speak, after the letter of offer was accepted. The Lease

Agreement was signed more than a year later and in the interim, the fitting out work was

under way, laboriously, no doubt, but progress was slow indeed. Neither party appeared to

have referred to the terms set out in the Lease Agreement at all material times.

24 22. The Plaintiffs wrote to the Defendants by letter dated 30 March 1989, inter alia,

setting out some reasons why work was delayed. In paragraph 6 of that letter they said: We

regret that the site work cannot be completed any earlier so that your rental income for

the basement can commence. However, in view of our pleasant working relationship, we are

prepared to commence rental with effect from May 1989. We request that the

rental

(commencing 15 May 1989) would only be payable upon business commencement.

25 23. The Defendants replied by letter dated 27 April 1989 insisting that
the payment of

rent should start on 15 May 1989. The Plaintiffs issued a cheque dated 15 June for _____ payment

of rent from 15 May to 15 June 1989 but requested the Defendants to bank in the cheque

only on 28 June 1989. In their letter dated 12 June 1989 the Plaintiffs stated that they

will issue another cheque dated 15 July after the first cheque was cleared. This set the

trend. Thereafter, the Plaintiffs were often dilatory in the payment of rent and that

resulted in the Defendant obtaining judgment in default in respect of the rent for October

1989.

[illegible]

rent from May 1989 under duress. By no stretch of the imagination can the Defendants'

conduct be interpreted as coercion giving rise to a claim under duress. The Plaintiffs

might have been under pressure to complete the fitting out work quickly, but that is not

what duress means in law. The Plaintiffs were entitled to challenge the Defendants that

rent was not due until after TOL, but they chose not to. If they were right, the

Defendants would not be entitled to rent as claimed, and would also not be in any position

to gain repossession of the premises. A threat to pursue their remedies in court for

payment of rent cannot constitute duress.

27 25. If the Plaintiffs failed to seek legal advice when they had ample time
to do so, it

is indeed their own folly. If they had sought legal advice and were advised to pay up,

then their recourse is against the solicitors if that advice was negligently given. If

they were advised that they were not obliged to pay but elected to do so nonetheless, then

they cannot cry duress subsequently. A mere statement in August 1989 by their then

solicitors that they were forwarding the cheque for rent without prejudice is of no

assistance to the Plaintiffs. The facts here, therefore, differ materially from that in

Maskell v Horner < 1915 > 3 KB 106 which was relied upon by counsel for the Plaintiffs.

28 26. It is also important to note that while the Plaintiffs claim that they had no

choice and allowed judgment in default to be entered against them, nothing was done to set

aside that judgment, which still stands. Accordingly, the Defendants were entitled to

repossess the premises, and to ask for a fresh lease agreement to be executed. Thus, the

fresh agreement dated 20 July 1990 cannot, therefore, be said to be entered into by the

Plaintiffs under duress.

29 27. The Plaintiffs' claim is, accordingly, dismissed with costs.

30 - Sgd - Choo Han Teck

31 Judicial Commissioner

Choo Han Teck JC

Kok Mun Loon [Charles N Mendis & Partners] for the plaintiffs
Morris John and Kelvin Tan [Drew & Napier] for the defendants
