IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 207

OS 9/1998

Between

Masa-Katsu Japanese Restaurant Pte Ltd

… *Plaintiff*

And

Amara Hotel Properties Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Landlord and Tenant — Agreements for leases

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Masa-Katsu Japanese Restaurant Pte Ltd v Amara Hotel Properties Pte Ltd

[1998] SGHC 207

OS 9/1998
Lim Teong Qwee JC
23 June 1998

Judgment:

LIM TEONG QWEE JC

By this originating summons issued on 6 January 1998 the plaintiff (which I shall refer to as the tenant) seeks the determination of a question as to the time to exercise an option for renewal of a lease and claims certain reliefs arising out of the determination of the question and certain other reliefs. At an early stage of the hearing the tenant applied to amend the statement of the questions and reliefs and the defendant (which I shall refer to as the landlord) did not oppose the application and I allowed it. The amendment effectively introduced new reliefs in substitution for some others. On 3 March 1998 the tenant further applied to amend the statement of the reliefs claimed by adding a claim for rectification of the lease. The application was opposed on the ground that it was made very late. I allowed the amendment.

2.The reliefs claimed in the amended form are as follows: (a). Prayer 1 claims an order that the landlord grants to the tenant a renewal of the lease in

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accordance with the terms of an agreement comprised in an offer to lease dated 19 September 1994 from the tenant and a letter of acceptance dated 27 September 1994 from the landlord and varied by a letter dated 10 February 1995 from the landlord.

(b). Prayer 2 claims an order for repayment by the landlord of sums overpaid by the tenant for rent, service charge and security deposit.

(c). Prayer 3(1) claims rectification of a lease dated 5 September 1995 and prayer 3(2) claims a declaration and certain orders arising out of the lease as rectified.

(d). Prayers 4 to 7 claim damages, interest, accounts and inquiries and costs as claimed in the original prayers 5 to 8.

3.On 3 March 1998 I made no order on prayer 1 and on prayer 2 I ordered repayment of the amount overpaid. On prayer 3(1) I ordered the lease to be rectified and on prayer 3(2) I granted the declaration asked for in para (a). I made no order on prayer 4 for damages and on prayer 6 for accounts and inquiries and I awarded costs to the tenant. On 19 March 1998 I heard further arguments at the request of the landlord and varied the order as to costs. These are my grounds.

4. ***Rectification***

On 19 September 1994 the tenant wrote to the landlord a letter (which I shall refer to as the offer letter) making an offer to take a lease of the premises at [num]01-17 of the building complex known as The Amara at 165 Tanjong

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Pagar Rd subject to certain terms and conditions set out in the offer letter. The relevant terms and conditions were:

> 2 Lease Period
>
> *Three (3) years with an option to renew for a further period of three (3) at prevailing market rental or at the current rental plus 30% whichever is the lower upon the terms and conditions to be agreed.*
>
> 3 Rent
>
> *The rental including service charge is to be $10 per square foot per month payable in advance on the lst day of each calendar month.*
>
> 4 Security Deposit
>
> *The security deposit in cash to be equivalent to Three (3) months` rent and service charge in the sum of S$60,000 (Singapore Dollars: Sixty Thousand only). This amount is subject to change, pending on an independent survey of the area once the unit has been renovated ...*
>
> 5 Fitting-Out
>
> *A rent-free period of six (6) weeks from the date of possession of the premises will be granted for the fitting out of the premises ...*
>
> 6 Commencement Date of Lease
>
> *The commencement date of lease shall be upon the expiry of the fitting-out period*
>
> ...
>
> 8 Lease Documents
>
> *Upon acceptance of our offer we will execute a lease within 14 days from date of receipt of the lease documents ...*

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> 9 Permitted Use
>
> *For use as Japanese Restaurant serving sushi, sashimi and tempura dishes from grilled counter, steamed speciality dishes and other Japanese food.*
>
> 10 Forms of Lease
>
> (1) The lease shall be drafted on such further terms and conditions as your solicitors deem fit for the purpose of our trade.

The offer letter was substantially in the form provided by the landlord with changes agreed upon between the parties.

5.On 27 September 1994 the landlord replied by letter (which I shall refer to as the acceptance letter) the relevant part of which said:

> *We are writing to confirm our acceptance of your offer and advise that our solicitors are preparing the lease agreement and will revert to you in due course.*
>
> *As stipulated in cl 10(3) of your offer letter, you shall submit the additions/alterations and signage plans of the unit for our approval before doing the same.*
>
> *The management of Amara Hotel Properties Pte Ltd takes this opportunity to wish you all the best in your business endeavour.*

The tenant paid part of the security deposit in accordance with the terms in the offer letter and took possession for the purpose of fitting out the premises.

6.The tenant encountered difficulties in regard to the fitting out works and on 19 December 1994 it wrote to the landlord to request an extension of three weeks. The six-week period for fitting out was due to expire on 28 December 1994. The request was at first turned down but following a meeting between representatives of the parties and a further letter from the tenant the landlord

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agreed to an extension. In its letter of 10 February 1995 (which I shall refer to as the variation letter) the landlord said:

> *After much consideration, we have agreed to extend the fitting-out period for another two weeks instead of the one week that we originally allowed for. Hence, the lease of unit [num]01-17 The Amara will commence on 12 January 1995.*

The letter went on to say:

> *Thus, proceed to remit rental payments to us for the months of January and February 1995. For the time being, the rental payment due to us will be based on the approximate area of the premises. We will keep you informed once the actual area has been established and will refund the balance, if any, back to your company ...*
>
> *As regards to your proposal to amend the lease period to five years with an option to renew for another five years, we regret to inform you that your proposed amendment is unacceptable to us. The lease period for the above unit will thus remain at three years with an option to renew for another three years.*

The tenant was already in possession and would have been in possession since 16 or 17 November 1994 when the fitting out period commenced. The fitting out works had been completed and both the landlord and the tenant had incurred expenditure. Rent had been paid and continued to be paid at $20,000 a month based on the estimated area.

7.On 26 April 1995 the landlord sent to the tenant the lease prepared by its solicitors. A copy of that lease was not produced but two clauses were not acceptable to the tenant and on 3 July 1995 the landlord agreed to exclude one of those two clauses and the tenant agreed to the other clause apparently after an explanation from the landlord. In due time the parties signed the lease which was dated 5 September 1995. The lease is a 57-page document with three schedules one of which sets out 19 paragraphs of rules and regulations of the building complex which the tenant must observe and comply with.

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8.There were mistakes in the lease. The clauses affected in respect of which rectification is claimed fall into two groups broadly. One group comprises provisions as to the rent, service charge and security deposit. The tenant`s case is that an agreement for a lease had already been concluded by the correspondence, ie the offer letter dated 19 September 1994, the acceptance letter dated 27 September 1994 and the variation letter dated 10 February 1995. In that agreement the rent including service charge was $10 per sq ft per month and the security deposit was three months` rent and service charge. The amount of the rent and service charge was to be adjusted according to the area to be ascertained by an independent survey. The lease fixed the rent and service charge at $20,000 per month based on the estimated area of 2,000 sq ft. There was no provision for any adjustment upon the area being ascertained.

9.The landlord did not oppose rectification in respect of the clauses of the lease in this group and I made an order accordingly. It is clear on the evidence that before the lease was signed the parties had agreed on all the material terms of an agreement for a lease. The premises were identified. The rent and service charge were agreed. The term of the lease was agreed and the commencement date was fixed by reference to an agreed timetable. Rent had been asked for unconditionally (save as to adjustment on ascertainment of the actual area) and duly paid. The parties have acted upon the faith of the correspondence. They undoubtedly considered themselves bound as landlord and tenant of the premises although the offer letter of 19 September 1994 contains certain terms two of which call for some consideration.

10.Paragraph 8 of the offer letter says that upon acceptance of the offer the tenant will execute a lease within 14 days of receipt of the lease documents. Clearly it was contemplated that the arrangements between the parties would be

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recorded in a formal document. The question is whether the execution of a lease by the tenant is a condition of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction which has already been agreed to will in fact go through. See **Von Hatzfeldt-Wildenburg v Alexander** [1912] 1 Ch 284 per Parker J at p 289.

11.I am unable to read into para 8 of the offer letter a condition precedent to the creation of an agreement that the lease documents should be signed and nothing in the language of any part of the offer letter or of the acceptance letter or the variation letter leads me to do so. The offer letter does not say so. It does not say that upon the offer being accepted there is nevertheless to be no agreement until the tenant has signed the lease. It does not say anything of the kind and nothing in the correspondence suggests such a construction. I think execution of a lease by the tenant was no more than an incident of the performance of the agreement reached by the parties.

12.Paragraph 10 of the offer letter says that the lease would be drafted `on such further terms and conditions as [the landlord`s] solicitors deem fit for the purpose of [the tenant`s] trade`. The lease which was to be signed would contain further terms and conditions. These further terms and conditions were left to the landlord`s solicitors. They were content to be bound by such further terms and conditions as the solicitors came up with if they were deemed by the solicitors to be fit for the purpose of the tenant`s trade. There was nothing more for the parties to do except to execute the lease. An agreement is not incomplete because it leaves some questions to be settled by a third party. See **Arcos Ltd & Anor v Aronson** [1930] 36 Lloyd LR 108 per Wright J at p 112. In that case important questions were left to be settled by arbitration. I think the parties had clearly finished reaching an agreement.

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13.The other group of clauses affected by the application for rectification comprises provisions as to the commencement date of the term of years and the option for renewal. The landlord did not oppose rectification in respect of the clauses as to the commencement date of the term but opposed rectification in respect of the option for renewal. A point was taken that if the option clause were rectified in the manner applied for by the tenant it would be void for uncertainty. The option for renewal is contained in cl 12 of the lease. The application seeks to delete the whole of this clause and to substitute with:

> *The lessees shall be entitled to an option to renew the lease for a further period of three (3) years at the prevailing market rental or at the current rental plus 30% whichever is the lower upon the terms and conditions to be agreed.*

The landlord`s case is that this clause would be unenforceable because of the words in Italics. It will be seen that these words are also present in the lease.

14.It was not in dispute that the term commenced on 12 January 1995 and I ordered that the date `5th January 1995` in cl 2 of the lease be deleted and substituted by `12th January 1995`. The term of three years accordingly ended on 11 January 1998. Clause 12 of the lease provides:

> *The lessors may at the written request of the lessees made not less than three (3) calendar months before the expiration of this lease hereby created and if there shall not at the time of such request and also at the time of expiry of this lease be any existing breach or non-observance of any of the terms conditions and provisions contained herein and on the part of the lessees to be observed or performed at the expense of the lessees* ***grant to the lessees a lease of the demised premises for a further term of three (3) years from the expiration of this lease upon terms and conditions to be agreed by the parties****.*

I ordered that the words in Italics be deleted and substituted by "renew the lease for a further period of three (3) years from the expiration of this lease at the

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prevailing market rental or at the current rental plus 30% whichever is the lower upon the terms and conditions to be agreed`. I shall consider the question of uncertainty in the next section of this judgment.

15. ***Declaration***

By a letter dated 4 October 1997 the tenant wrote to the landlord:

> *Kindly be informed that we wish to renew the lease of the abovementioned unit for another three (3) years commencing from 5 January 1998 in accordance with our agreement.*
>
> *Your early attention to the above matter will be much appreciated. Kindly let us know what is the new rate of rental as soon as possible.*

On 27 October 1997 the landlord replied:

> *We refer to your letter informing us of your intention to discuss renewal terms.*
>
> *As it is a term in our agreement that you may request for renewal not less than three (3) months before the expiration of this current lease, it is therefore with regret that we shall be unable to accede to your request for renewal.*
>
> *Your letter of renewal was received by us through fax only on 10 October 1997 and 13 October 1997 through registered post.*

The objection taken was that the letter of renewal was too late.

16.The option had to be exercised by a written request made three months before the original term of the lease expired. Before the lease was rectified the original term was expressed to expire on 4 January 1998. The tenant`s request would have had to be made by 4 October 1997. As rectified the original term expired on 11 January 1998 so that the request had to be made by 11 October 1997. At the hearing the landlord also objected that notice of the request had not been given in accordance with cl 11(e) of the lease which provides:

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> *Any notice required to be served on the lessors hereunder shall be served personally or by sending the same by prepaid registered post addressed to the lessors at the address of the lessors hereinbefore set forth or at such address as the lessors shall from time to time by notice in writing to the lessees nominate ... and any notice sent by post shall be deemed to be given at the time when it ought to be delivered in the due course of post.*

The landlord`s case is that notice could not be given by fax and the notice by registered post was received only on 13 October 1997.

17.Clause 11(e) applies to a notice that is required to be served on the landlord under the lease. That is what the opening words of that paragraph say. The lease contains provisions which require a notice to be given by the tenant, eg para (s) (Notice to Lessors) of cl 6 (Lessees` Covenants) which provides that the tenant will give prompt notice in writing of any accident or defect or want of repair. The lease also contains provisions (and there are far more of these) which contemplate a communication from the tenant to the landlord, eg para (a) (User) of cl 6 permits the tenant to use the premises under its present name or such other names as may be approved by the landlord. Clearly a request or a notice of intention to use such other names will have to be communicated to the landlord. Such a notice will not be a notice that is ***required to be served on the landlord under the lease*** . The option for renewal is to be exercised by making a written request. There is no provision in the lease that requires notice of such a request to be served on the landlord. In my judgment cl 11(e) does not apply to a written request made under cl 12 for a renewal of the lease.

18.The written request dated 4 October 1997 was in fact received by the landlord. It was received by fax on 10 October 1997. It was not suggested that it was received other than at the landlord`s office where it could be attended to immediately. It was undoubtedly in writing when it was received.

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Communication by fax is not uncommon. It is fast. It is efficient. It accords with the practice of the business community. It seems to me that where as in this case a written request is to be made it is sufficiently made as much where the request is written on paper that is physically transported to the office of the person to whom the request is made as where it is transmitted by fax and received in written form at that person`s office. See **Chua Sock Chen v Lau Wai Ming & Anor** [1989] SLR 1119 at p 1126.

19.The landlord also objected to cl 12 of the lease as rectified as being void for uncertainty. It ought not to be rectified in the manner applied for as it would be useless. This is one argument that may be advanced. The other argument may be that the written request for renewal cannot be of any effect since cl 12 is void for uncertainty and the declaration asked for ought not to be made. The tenant`s application is for a declaration that it has properly exercised the option for renewal (by making the written request) in accordance with the terms of the lease.

20.Clause 12 provides that upon the tenant`s request and upon certain conditions being satisfied the landlord may renew the lease `upon the terms and conditions to be agreed`. Mr Gopal referred to **Bushwall Properties Ltd v Vortex Properties Ltd** [1976] 2 All ER 283 at p 294 where Buckley LJ said:

> *I fully accept that the court should be reluctant to hold any contract void for uncertainty if that consequence can be avoided; but, on the other hand, it is not the function of the court to make or to perfect contracts entered into between members of the public.*

I was also referred to **Jewellery Industries (S) Pte Ltd v Sintat Rent-a-Car Pte Ltd** [1993] 2 SLR 623 and **Klerk-Elias Liza v KT Chan Clinic Pte Ltd** [1993] 2 SLR 417 .

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21.In ***Bushwall Properties*** the question was whether an enforceable contract had been concluded by the parties. It may well be that the essential terms of the `contract` so called are so uncertain that there is no binding contract at all as in that case. The question before me is different. The question is not whether an enforceable lease has been concluded. It certainly has and the parties have acted on the faith of it. The question is whether a ***term*** of the lease is void for uncertainty. Even if the term is void the landlord is not contending that the lease itself is void for uncertainty. I entirely agree that it is not the function of the court to make or to perfect contracts entered into between members of the public but that is not what this action is about.

22.In ***Jewellery Industries*** the question was whether an option for renewal clause in a lease was valid and enforceable. The material part of the clause was:

> *... grant the tenant ... an extension of two (2) years from the expiration of the term hereby created subject only to the right of the landlord to review the rental payable and upon such terms and conditions as may be agreed by the parties hereto with the exception of the present provision for renewal.*

Judith Prakash JC (as she then was) identified five elements in that clause. Two of them are found in that part I have referred to. The extension of two years would be (1) subject to the right of the landlord to review the rental payable and (2) upon such terms and conditions as may be agreed by the parties.

23.As to the rental review element Her Honour said at p 627:

> *There was undoubtedly an uncertainty of concept at the heart of this provision since it was not even possible to ascertain from its wording on what basis the rental for the extended period should be determined.*

King`s Motors (Oxford) Ltd v Lax [1970] 1 WLR 426 was followed but unfortunately it does not appear that counsel referred to ***Corson & Ors v***

Rhuddlan Borough Council (1990) 59 P & CR 185 although the actual decision might not have been different. In that case Ralph Gibson LJ at p 194 inclined to the view that ***King`s Motors*** was wrongly decided and Balcombe LJ doubted whether it was correctly decided. The third member of the court Staughton LJ did not refer to it at all.

24.As to the terms and conditions as may be agreed Judith Prakash JC said at p 628:

> *Had this portion of the clause stood alone, it might not have presented an insuperable difficulty. If the main terms of a tenancy, ie duration, premises and rent, are agreed, the contract can take effect although some minor issues are left unresolved. When this portion that terms were to be agreed was read together with the provision regarding rent, however, a different light was thrown on the picture. If the rent was subject to renegotiation and was at large, then depending on the level of renewed rent, parties might very well have wished to change ancillary provisions of the lease such as the indemnity clauses, provision for payment of property tax and reinstatement obligations.*

I am not sure how ***Jewellery Industries*** assists the landlord. It is clear that in the case before me the terms and conditions as may be agreed stand alone. The rent has been fixed or is ascertainable. The other main terms of the tenancy (for the renewed term), namely, the duration and commencement of the renewed term and the identity of the premises are agreed.

25.In ***Klerk-Elias Liza*** the landlord wrote to the tenant to confirm the terms of rental of the premises. These terms were accepted by the tenant. There were eight terms providing for rent and other essential matters and one of these terms was:

> *The lease will be for three years commencing 1 December 1983 with an option for renewal at the end of the period, details of which will be incorporated in the lease.*

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The tenant`s case was that a concluded agreement had not been reached. She relied on this and two other terms in the letter.

26.Mr Gopal referred to the dissenting judgment of Warren LH Khoo J in which he said at p 443:

> *... if the clause had simply said `The lease will be for three years commencing 1 December 1983 with an option for renewal at the end of the period`, without the words referring to details in the lease, it would have had the same effect as had the words in* ***Lewis v Stephenson*** *[1898] 67 LJQB 296.*
>
> *The words `details of which will be incorporated in the lease` are an integral part of the clause dealing with the subject of option to renew. I do not think one could properly disregard them and treat the clause as one providing for renewal on the same terms as those of the existing lease.*

In his judgment there was no concluded contract.

27.I think it is necessary to go back a little. At p 441 His Honour said:

> *I think there are only two questions that need to be asked and answered about these provisions in the letter: firstly, were these material terms, and secondly, were they settled?*

Later at the same page he said:

> *One is entitled, I think, to look at the course of negotiations and the evidence, not to find out what is meant by these words, or the provisions as a whole, but to answer the question: Had the parties reached agreement?*

There was some evidence that the tenant wanted an option to renew for two years and the landlord was not sure what it should be. It was left undecided. The rent would depend on the market at the time of renewal. At p 443 before the passage cited His Honour said:

> *... the letter did not provide for at least two essential features of an option for renewal. It did not say how long the renewed term*

> *would be. It also did not say what were the terms of the renewed tenancy, for instance the amount of the rent.*

His Honour concluded that the term as to the option for renewal (and another term relating to subletting) left the two matters unsettled and these were material terms. I do not think the landlord in the case before me can derive much assistance from His Honour`s dissenting judgment.

28.The majority judgment in ***Klerk-Elias Liza*** was delivered by Karthigesu J (as he then was) who at pp 430, 431 referred to **Brown v Gould** [1972] Ch 53 and cited an extensive passage from the judgment of Megarry J at pp 56 to 58. I do not think it is necessary for the present purpose to cite the whole of that passage again but it may be helpful to cite part of it at the end. After referring to **Greater London Council v Connolly** [1970] 2 QB 100 Megarry J said at p 57:

> *Lord Pearson said, at p 110:*
>
> *`As my Lord has said, the courts are always loath to hold a clause invalid for uncertainty if a reasonable meaning can be given to it, and it seems to me easy to give a reasonable meaning to this condition.`*
>
> *Sir Gordon Willmer agreed. No doubt there may be cases in which the draftman`s ineptitude will succeed in defeating the court`s efforts to find a meaning for the provision in question; but only if the court is driven to it will it be held that a provision is void for uncertainty.*

Continuing Karthigesu J said:

> *Applying these principles to the instant case we are of the view that a court would give effect to both these provisions, ie cll 3 and 6 of the letter of 7 July 1983. Accordingly we have no hesitation in coming to the conclusion that the acceptance by Mrs Klerk of Dr Chan`s letter of 7 July 1983 constituted in law a concluded and enforceable contract.*

I think it is clear that the majority of the Court of Appeal held that the term as to the option for renewal (and the other term) was not void for uncertainty.

29.In ***Brown v Gould*** the question was whether an option clause in a lease was void for uncertainty. There was never any doubt that the lease itself containing that clause was a perfectly valid and enforceable lease. In ***Greater London Council v Connolly*** the question was whether a term in a lease as to increase in rent was void for uncertainty. Again there was never any doubt as to the validity of the lease. The question before me also is whether an option for renewal clause is void for uncertainty. That clause is contained in a lease which is undoubtedly valid and enforceable although the original term has expired.

30.The relevant words in the option for renewal clause are:

> *renew the lease for a further period of three (3) years from the expiration of this lease at the prevailing market rental or at the current rental plus 30% whichever is the lower upon the terms and conditions to be agreed by the parties.*

The lease is as I have earlier observed contained in a 57-page document. There are three schedules. The first contains a description of the premises. The second contains a floor plan of the first storey of the building complex. The premises are shown on this plan. The third schedule contains 19 paragraphs of rules and regulations of the building complex which the tenant must observe and comply with. The landlord is to ***renew*** the lease. The lease is to be renewed for three years at the new rent which is ascertainable. Apart from the duration of the term and the rent the other terms of the lease would be the same as in the present lease except for the option for renewal if there are no other terms and conditions to be agreed. The present lease already deals comprehensively with every material term and many others which are much less material.

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31.In ***Corson*** Ralph Gibson LJ said at pp 193, 194:

> *[The option clause] must be construed in the context of the entire transaction of which the second lease formed part. It is expressed in terms suitable and relevant to contractual right and obligation and not to the mere expression of a willingness at the end of the first term to negotiate, free of any legal obligation, for the grant of a new term. If it was intended to be no more than a statement that the landlords would negotiate, it was grossly misleading to anyone unfamiliar with the argument capable of being mounted upon the decision in the case of Oxford Motors v Lax, and it served no purpose whatever in a contractual document. If there was to be no obligation there was no need for or point in the definition of the time for service of notice for the exercise of the option. There was equally no need for or point in the expression of the condition that there must be no subsisting breach of any of the obligations of the [tenant]. Finally, there was no point in the provision that the rent under the new lease should not exceed the current rent of 1,150. It seems plain to me, therefore, that, in the absence of authority requiring us to take a different course, it is proper to apply to this clause the principle applied by Lord Tomlin to the document in Hillas & Co v Arcos, namely, that the court should, if it can:*
>
> *`so balance matters that without violation of essential principle the dealings of men may as far as possible be treated as effective.`*

With respect I am in entire agreement with that approach and I think that those words apply with no less force to the option clause in the case before me. Staughton LJ at p 198 put it this way:

> *The parties obviously intended the option clause to be of legal effect; they went to the trouble of specifying amongst other things, an upper limit for the new rent; by a separate lease which was part of the same bargain the trustees had taken the clubhouse for a period of 99 years; they had undertaken an obligation, which may well have been onerous, to carry out improvements. I do not believe that either party would have contended that, if there were no agreement [on the rent], the option was to be ineffective.*

A term was implied that the rent to be agreed was to be a fair rent with the upper limited stated. It was held that the option clause was not void for uncertainty.

32.In ***Greater London Council v Connolly*** the tenancy agreement contained a term that the rent was `liable to be increased or decreased on notice being given`. Lord Denning MR said at p 108:

> *It is said that the condition is too vague: it is too uncertain: and, therefore, invalid by the law of contract. I do not think so. The courts are always loath to hold a condition bad for uncertainty. They will give it a reasonable interpretation whenever possible. It is possible here. I read this condition as if it said that the rent and other sums `are liable to be increased or decreased* ***by the landlord on reasonable notice*** *being given by him.` The court can always say what is reasonable notice.*

33.In ***Corson*** an option clause was not void for uncertainty by implying a term that the rent to be agreed was to be a fair rent. In ***Greater London Council v Connolly*** a term providing for increase or decrease of the rent was not void for uncertainty by implying a term that it could be increased or decreased by the landlord on reasonable notice. In the case before me the question I have to consider is whether by implying a term the option clause for a renewed term on the terms and conditions to be agreed may be saved from being void for uncertainty. I think it can.

34.The landlord is the owner of or at any rate has a substantial interest in the entire building complex. This can be seen from the provisions of the lease. I need only refer to some of these provisions. Clause 9 (Lessors` Covenants) para (c) (Management & Operation of the Complex) provides that the landlord shall conduct, manage and operate the building complex and para (d) (Maintenance of the Complex) provides that the landlord shall maintain and keep in repair the common areas and facilities. Clause 10 (Provisos) para (a) (Alterations etc to the Complex) reserves to the landlord the right from time to time to improve, extend, vary, amend or reduce the building complex.

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35.Units in the building complex are or will be let to other tenants. This also can be seen from the lease. Clause 6 (Lessees` Covenants) para (e) (Prohibited Activities) prohibits acts and things which may be of annoyance, nuisance, grievance, damage or disturbance of other lessees or occupiers of the building complex. The rules and regulations in the third schedule regulate the conduct of the tenant in relation to the premises and the common areas and facilities in the building complex. This is clearly as much for the benefit of the landlord and the tenant as it is for the benefit of other tenants. These rules and regulations are liable to be varied, added to, deleted or amended from time to time in accordance with cl 6 para (k).

36.The premises were let to the tenant for a clearly defined purpose. The tenant is prohibited from using any part of the premises other than as an `outlet for Japanese Restaurant serving sushi, sashimi and other Japanese food`. The premises would have had to be fitted out for the purpose of a Japanese restaurant and the lease contains several provisions as to the requirement of obtaining the landlord`s consent for alterations and additions. Upon the expiry or sooner termination of the lease the expenses of such alterations and additions carried out to the premises would be wholly lost to the tenant.

37.It seems to me that the terms and conditions to be agreed between the parties should be fair and reasonable having regard to the lease dated 5 September 1995 between the parties and its provisions, the landlord`s interest in the building complex, the letting of units in the building complex to other persons, the permitted use of the premises under the lease, the duration of the term of the renewed lease and the rent (both of which have been fixed or are ascertainable) and the absence of any provision for an option for a further renewal. What is fair and reasonable in these circumstances can always be determined by judicial

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process if the parties cannot agree. The lease is most comprehensive in its provisions. The parties clearly intended the option clause to be of legal effect. I think it is. In my judgment the option clause is not void for uncertainty. In the premises I granted the declaration asked for in para (a) of prayer 3(2).

Lim Teong Qwee JC

Benjamin Goh (Bernard Rada & Partners) for the plaintiff
Gopal Krishnan Nair (G Raman & Partners) for the defendant

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