Ng Poh Guan v Chan Ai Leng and Others
[2001] SGHC 354

Case Number	: Suit 958/2000/A
Decision Date	: 26 November 2001
Tribunal/Court	: High Court
Coram	: Woo Bih Li JC
Counsel Name(s)	: Edwin Kung and Kenneth Tan (Kenneth C P Tan & Liew) for the plaintiff; M N Swami and Sobana Swami (M N Swami & Yap) for the defendants
Parties	: Ng Poh Guan — Chan Ai Leng; Apirade Pramersa; Ak Tiong Hua; Honey Entertainment Pte Ltd

Judgment

GROUNDS OF DECISION

BACKGROUND

1. The Plaintiff is Ng Poh Guan (Mr Ng).

2. In his Statement of Claim, he alleged that there was an oral agreement between he and the First Defendant Chan Ai Leng (Ms Chan), who represented herself, the Second Defendant Apirade Pramersa and the Third Defendant Ak Tiong Hua, for him (Mr Ng) to buy the shares of the First to the Third Defendants in the Fourth Defendant Honey Entertainment Pte Ltd (Honey). The purchase price was $328,000.

3. Honey had the benefit of a tenancy of No 33 Mohamed Sultan Road #01-01, #01-02, #01-03, #01-04 and #01-05/06 Singapore 238977 (the Premises). It had entered into an agreement dated 3 September 1999 with the landlord Hong Joo Company Pte Ltd (the Landlord) to rent the Premises for a term of three years commencing from the expiry of a two-month rent-free period, which rent-free period was to commence upon issuance of the Temporary Occupation Permit.

4. The terms of the oral agreement between Ms Chan and Mr Ng were set out in a letter of intent dated 9 September 2000 and pursuant to such terms, certain payments by him were made. Also, a formal agreement was to be drafted and signed.

5. Mr Ng alleged that there was a subsequent oral agreement on 14 October 2000 between Ms Chan and him under which, inter alia:

> (a) the Defendants would procure the drafting of and submission to him of the formal share agreement on or before 18 October 2000,
> (b) if there was any breach by the Defendants, he would be refunded everything he had paid, half of all rent payments from 1 October 2000 and liquidated damages of $125,000.

6. He alleged that the Defendants were in breach of the oral agreements. The allegations in respect of breach were:

> (a) they failed to deliver any draft of the formal share agreement by 18 October 2000 or at all,
> (b) the Defendants failed to take any step towards the drafting of the formal

sale agreement,
(c) the First to Third Defendants had caused the Fourth Defendant to surrender the Premises back to the Landlord without just and reasonable cause.

7. He alleged that the consideration for whatever payments he had made had failed and the Defendants had received and had had the use of the same, and he was entitled to and did rescind the oral agreements.

8. He claimed the return of whatever monies he had paid and $125,000 as liquidated damages.

9. In their Defence and Counterclaim, the Defendants did not deny that there was an oral agreement between Mr Ng and Ms Chan pertaining to the sale of the shares in Honey to Mr Ng. They alleged that the letter of intent did not set out all the terms agreed or accurately. However, it turned out that the alleged difference in terms was not material.

10. The Defendants also did not deny the subsequent oral agreement on 14 October 2000.

11. However the Defendants denied any breach.

12. The Defendants alleged that the keys to the Premises were handed to Mr Ng on 12 October 2000 for the purpose of cleaning, and doing some fitting up, and to enable him to re-position some air-conditioners but not to demolish anything without the concurrence of the Landlord.

13. However, on or around 14 October 2000, Mr Ng had caused the following to be demolished:

(a) Two of the 200mm thick party walls
(b) Toilet walls, wall tiles and toilet accessories
(c) Electrical installations
(d) Kitchen exhaust
(e) Built-in furniture and fittings
(f) Three built-in DJ counters
(g) Three built-in bar counters

14. I will refer to these works as the Unauthorised Works.

15. The Defendants alleged that as a result of the Unauthorised Works, the Landlord was furious. The Landlord had threatened to re-enter the Premises and to claim damages.

16. As a consequence, the Defendants had to negotiate with the Landlord resulting in the surrender of the Premises to the Landlord and a deduction of $10,000 from a tenancy deposit so as to avoid having to pay further damages.

17. The Defendants counter-claimed:

(a) loss of the two year tenancy,
(b) loss of the time spent on renovations of the Premises,
(c) loss of profit if the Fourth Defendant had continued with the tenancy with the Landlord,
(d) loss of a chance to sell the shares in the Fourth Defendant to any other party,
(e) return of various licences which had been handed to Mr Ng pending

completion of the sale,
(f) refund of the sum of $10,000 paid to the landlord.

18. In his Defence to Counterclaim, Mr Ng asserted that Ms Chan had personally endorsed the Unauthorised Works even before the commencement thereof but abandoned this assertion at trial.

19. Mr Ng also alleged that if the prior concurrence of the Landlord was required, it was the responsibility of the Defendants to obtain the same and not him.

20. He also repeated the allegation that the Fourth Defendants surrender of the Premises to the Landlord was without just cause and unwarranted.

21. The pleadings of Mr Ng and of the Defendants were atrocious. In many material parts, they made no distinction between the First to Third Defendants on the one hand and the Fourth Defendant on the other hand.

22. The amendment of the Defence and Counterclaim, while addressing some of the deficiencies, did not address all of them.

23. The Amended Defence and Counterclaim also still failed to assert Honeys cause of action as against the Plaintiff, given that Honey had no contract with Mr Ng.

24. At the conclusion of the trial, I declared that it was Mr Ng who was in breach of his contract with Ms Chan and the Second and the Third Defendants.

25. I dismissed Mr Ngs claims and ordered him to pay damages to Ms Chan and the Second and the Third Defendants to be assessed. However their damages were not to include any loss of profit if Honey had continued with the tenancy of the Premises because the evidence showed that the First to Third Defendants were not intending to continue with any operation of a pub and, if Mr Ng had not breached his contract, he would have owned and controlled Honey in any event.

26. Honeys counter-claim for damages was dismissed and consequential orders were made regarding the licences.

27. Mr Ng has appealed against that part of my decision which is adverse to him.

FURTHER ALLEGATIONS AND FACTS

28. At the time of the trial, Mr Ng was operating a pub at 27 Mohamed Sultan Road.

29. In his affidavit of evidence-in-chief (AEIC), he explained that in August 2000, he was keen on operating a pub along Mohamed Sultan Road. He found the Premises suitable and on 2 August 2000, his agent offered to rent the Premises from the Landlord at $50,000 a month. Upon further investigation, he discovered that Honey had a tenancy of the Premises for about $30,000 a month (the actual rent was $32,000 a month). Accordingly, he decided to try to take over Honeys tenancy by taking over Honey. He thought he could achieve this as Honeys business was not doing very well then.

30. With this in mind, he met Ms Chan on 6 September 2000. Ms Chan was agreeable, on behalf of herself and the other shareholders of Honey, to sell all the shares in Honey to Mr Ng for $328,000.

31. To Mr Ng, this route would enable him (a) to save on some rent, (b) there would be minimal renovations and (c) he had estimated that it would take him less than a month to spruce up the place and open for business (para 7 of his AEIC).

32. During the discussions with Ms Chan, she had told him that Honey needed money to pay the Landlord some monies owing. As he did not wish to jeopardize Honeys tenancy, he agreed to and did issue a cheque for $32,960 in favour of the Landlord (para 8 of his AEIC).

33. Ms Chan and Mr Ng signed the letter of intent on 9 September 2000. Although this document is stated to be subject to contract, both sides proceeded at the trial on the basis that it constituted or evidenced a binding agreement.

34. Subsequently on 18 September 2000, he met Ms Chan who informed him that more money was required to pay debts including monies owing to the Landlord. It was common ground that he eventually paid $100,000 (including the $32,960) as part payment of the purchase price (NE 12 line 15 and 16).

35. In cross-examination, he said that he had received a copy of Honeys tenancy agreement in September or the first week of October 2000. He said he did read the agreement and Clauses 2(g), (h) and (j) and 4(e) thereof.

36. Clause 2(g), (h) and (j) state:

> 2. The Tenant hereby covenants with the Landlord as follows:-
>
> (a)
>
> (b)
>
> (c)
>
> (d)
>
> (e)
>
> (f)
>
> (g) to carry out at their own expenses all or any of the following works within the demises premises:-
>
> > (i) Partitioning within the demised premises and any variation to the standard corridor or inter-tenancy partitions for subdivided suites, supplied and erected by the Landlord;
> >
> > (ii) Installation of all necessary electrical wiring, conduits, etc, for additional power points, light fittings, etc;
> >
> > (iii) Any alternation works relating to existing ceiling light fixtures, air-conditioning supply and return grilles, fire protective devices, etc supplied by the Landlord;
> >
> > (iv) Provision of carpets and other approved floor covering

or finishes within the demised premises.

(h) To ensure the abovementioned works are undertaken whereby necessary by specialist sub-contractors nominated or approved by the Landlord, in accordance with the approved plans and specifications to be endorsed by the Landlord. Where prior approval by the relevant building authority is necessary, no works shall commence until such approval is obtained in writing. All professional fees, charges and expenses incurred in this regard shall be borne by the Tenant;

(i)

(j) Not to make any alterations structural or otherwise to the demised premises without the prior written (sic) of the relevant authorities during the tenancy and in the event there is any unauthorised structure required to be removed, the Landlord shall immediately engage a contractor to remove the same and the Tenant shall reimburse the Landlord the cost for the removal of the unauthorised structure;
[Emphasis added.]

37. Clause 4(e) states:

4(e) That if the rents hereinbefore reserved or any part thereof shall at any time be in arrears and unpaid for seven (7) days after the same shall have become due (whether legally demanded or not) or if the Tenant shall at any time fail or neglect to perform or observe any of the covenants and agreements herein contained and on the Tenants part to be performed and observed or if the Tenant being a Company shall enter into liquidation whether compulsorily or voluntarily) or the Tenant making an assignment for the benefit of creditors or enter into agreement or make any arrangement for liquidation of the Tenants debts by compensation or otherwise or suffer any distress or process of execution to be levied on the Tenants goods or merchandise, then in such case it shall be lawful for the Landlord or any person or persons duly authorised by the Landlord on his behalf to re-enter into and upon the demised premises or any part thereof in the name of the whole and thereupon this tenancy shall absolutely determine but without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach by the Tenant of any of the covenants or agreements herein contained.

[Emphasis added.]

38. It was not disputed that on 10 or 11 October 2000, Ms Chan met with Mr Ng at a hotel and, at his request, she signed on some renovation plans pertaining to the Premises although she unwittingly signed where the Landlord should have signed.

39. On 11 October 2000, Mr Ngs solicitors Kenneth CP Tan & Liew (Kenneth Tan) forwarded to the solicitors for all the Defendants M.N. Swami & Yap (M N Swami) a draft of a loan agreement and of a shareholders agreement.

40. On 12 October 2000, M N Swami replied to suggest a meeting on Saturday 14 October 2000.

41. In the meantime, the keys to the Premises were given to Mr Ng for the reason I have mentioned

above (see para 12).

42. In the meeting of 14 October 2000, various matters were discussed with a view to signing a formal agreement.

43. In the meantime and unknown to Ms Chan, the Unauthorised Works were being carried out.

44. Ms Chans evidence was that on 15 October 2000, she received a telephone call from the Landlords agent who told her that the Landlord was furious about the Unauthorised Works, although at that point in time, he might not have been aware of all the Unauthorised Works.

45. The next day, she went to the Premises to check and found that the padlock or padlocks had been changed. However, she looked in to see the Unauthorised Works.

46. Ms Chan sought the help of M N Swami and Honeys architect Mr Yeo Chye Teck (Mr Yeo).

47. On 18 October 2000, M N Swami sent an urgent fax to Kenneth Tan. It said:

> Dear Sir
>
> RE: HONEY ENTERTAINMENT PTE LTD
> AND SHARE AGREEMENT
>
> We refer to the meeting held between the parties on Saturday 14th October 2000 and to your letter to us dated 16th October 2000.
>
> Our clients instruct us that they have just come to know from the Landlord of the premises that unauthorised renovation works had been carried out at our clients premises by your clients at 33 Mohamed Sultan Road and the Landlord has threatened to commence legal proceedings against our clients for the fundamental breach of the Tenancy Agreement whereby our clients not only have to restore the premises to the original state and but (sic) is liable to pay damages. Our clients may also loose the right to continue with the unexpired term of the Tenancy.
>
> Our clients understand that no planning approval has been applied for and/or that no approval has been given by the relevant authority to carry out the demolition and/or renovation works at our clients premises. Your clients and/or agents and/or representatives had represented to us at the said meeting that they had the requisite approval for the said renovation works at our clients premises. Further our clients had also handed the said keys to the premises to your clients as far back as 12th October 2000.
>
> Our clients are still willing to abide and incorporate the terms agreed upon at the said meeting, provided your clients get the cooperation of the Landlord to waive his objections and give the necessary approval to apply for the requisite approval from the relevant authority.
>
> Further terms to be incorporated in the Agreement would be:
>
> 1. That your clients shall be responsible to obtain the requisite written consent

from the landlord at their own expense for the renovation;
2 . In the event the landlord is to exercise his rights under the Tenancy Agreement for the fundamental breach caused by your clients, your clients should be liable for all consequences and losses to be sustained by our clients including the rental of the premises and loss of income for the unoccupied period of lease pursuant to such termination.

No objection should be taken by your clients to vitiate the agreement to be entered into in the event of unilateral terminations (sic) of the Agreement by the Landlord

.

We have been instructed by our clients to incorporate the above terms in the said agreement. Further we have also been informed by our clients that they are unable to enter the said premises to check on the extent of the unauthorised renovation works carried out by your clients to the said premises. Kindly let us have a date to inspect the said premises on an urgent basis.
[Emphasis added.]

48. On 19 October 2000, Kenneth Tan replied as follows:

We refer to your fax to us dated 18 October 2000. Our instructions are as follows:

(a) Our client denies carrying out unauthorised renovation work. Rather, and as was mentioned during the meeting on 14 October 2000, it was your client who has not obtained all required approvals for the renovation work she did, which resulted in the landlord of the premises (who apparently therefore cannot be issued the CSC) demanding that she regularise such work within a month or face legal action.

(b) .

(c) Our client has been advised that the renovation works do not require prior approval from any authority prior to commencement of works. They involve minor internal addition and alteration works, and do not compromise the structural integrity of the premises. Nonetheless, and as your clients are undoubtedly aware, our client intends to submit necessary documents from time to time, according to industry practice, to the relevant authorities. However, and as your Mr Swami was twice informed by our Mr Lewis Koh today, your client Ms Chan Ai Leng has not endorsed and has even taken away plans to be submitted to the URA, FSB and BCA for approval, in breach of her agreement to "co-operate" with our client. Your client will undoubtedly realise that the retention of such plans is to her detriment as they are intended, not only to cover the intended works, but also to regularise her omission in respect of her renovations, and we trust she will therefore hand over the endorsed plans accordingly. Also, such retention does not detract from her patent approval of the renovations works as borne out by the many plans and forms which she has already signed. In the event that, contrary to normal practice, your client insists that all work be suspended until approvals are applied for and obtained, then it would not be equitable for our client to be made to continue lending your client money to pay the rent in the

interim.

(d) Before such time our client takes over all the shares in the Company, our client regrets that he does not have any locus or nexus to obtain the landlords consent, assuming in the first place that such consent is required. Our client does not see how there was any breach, let alone a fundamental one as alleged. We trust your client understands that our client cannot stop anyone from commencing legal proceedings even if, in our clients view, there is insufficient basis to found a legal suit.

Be that as it may, our client suggests that a meeting be convened tomorrow between your clients and ours to resolve the matter amicably.

We look forward to receiving your draft agreement, which was due to have been transmitted to us yesterday, in the meantime.
[Emphasis added.]

49. On 20 October 2000, M N Swami wrote to Kenneth Tan as follows:

RE: HONEY ENTERTAINMENT PTE LTD
AND SHARE AGREEMENT

We refer to your fax dated 19.10.2000.

Our clients reiterate what has been set out in our letter dated 18.10.2000.

The Landlord has requested to inspect the premises at 4.00 p.m. today

.

We shall be obliged if you could kindly advise your clients to open the said premises to the Landlord or their servants or agents, as they are entitled to inspect the premises as per the terms of the Tenancy Agreement.

Our clients representative will be at the said premises as well.

Due to the fresh development, we need to have further discussions after inspection of the premises before we can enter into an Agreement.

In the meanwhile, please note that our client had at no time authorised your clients to replace the old locks with the new locks and kindly advise your clients to handover a set of keys to our clients immediately.

[Emphasis added.]

50. Ms Chan said she asked Mr Ng to attend the inspection. He did not. He did however arrange for a messenger to bring one key on 20 October 2000.

51. According to Mr Yeo, the inspection was attended by:

(a) Ms Chan
(b) The Landlords representative, Nicholas

(c) Mr Yeo Chye Teck, the architect
(d) A professional engineer Mr John Portwood (the PE).
(NE 71 line 11)

52. Ms Chan said that when the Landlords representative saw the extent of the Unauthorised Works, he threatened to repossess the Premises immediately as the works were carried out without the Landlords consent or approval from the relevant authorities. He also threatened to take legal action and hold Ms Chan and Honey liable for all damages, i.e to claim the reinstatement costs and legal fees and forfeit the deposit (see para 13 of her AEIC and NE 49 line 18 and 19).

53. According to Mr Yeo, he had received a telephone call from the Landlord on 14 October 2000. In para 13 of his AEIC, he said:

> 13. By the 14th of October 2000, I did not receive the said computer drawings or the interior design from Tony Teo to enable me to finalise the submission. However at about 4.30p.m on the same day, I received a phone call from the landlord that he had received (sic) from his upstairs tenants that there are heavy hacking from the premises. The landlord told me that when he went to the premises, he found that the party walls and toilet walls had been hacked off. He had also stated that the glass panel on the external wall outside the premises had been removed and that he feared that the bricks above the opening could fall. The landlord told me that he had taken photographs of the contractor who was seen hacking the walls. He told me that pursuant to what had happened to the premises without his approval, he wanted to re-possess the premises immediately and claim for damages. At his request I went to look at the opening from outside the premises to ascertain whether the bricks could fall from the top.

54. In re-examination, Mr Yeo added that the Landlords representative had said he wanted to take action against him (NE 72 line 14).

55. On 21 October 2000, Kenneth Tan wrote to M N Swami to state:

> We refer to your fax to us dated 20 October 2000.
>
> We were instructed to reiterate that your clients authorised the renovation works
>
> and for this purpose willingly gave our client the keys to the premises. .
>
> We now turn to the fifth paragraph of your said fax, in respect of which we have been instructed as follow:
>
> (a) Our client has always been willing to discuss matters with your clients, whether or not there is any "fresh development". However, your client Ms Chan Ai Leng did not meet our client at the agreed appointed time, and our client was therefore left waiting for your client to show up yesterday morning. Your client Ms Chan Ai Leng also neither answered nor returned our clients calls as well. Further, your client Ms Chan Ai Leng, despite numerous requests including that set out in our fax to you of 19 October 2000, has neglected, failed and/or refused to remedy her breach of agreement to co-operate by handing over the plans to inter alia regularise your clients non-compliance which plans she took. For the avoidance of doubt, all our clients rights are hereby reserved; and

(b) Even before one can enter into an agreement, it is imperative that there be a draft of such agreement on the table to discuss. Our client therefore requests that you transmit to us without further delay a copy of the draft agreement, which you said you could draft and deliver latest by 18 October 2000, *this Monday 23 October 2000*, for our clients instructions and comments. Thank you.

[Emphasis added.]

56. Ms Chan said that it was she who tried to contact Mr Ng between 15 and 20 October 2000 (NE 33 line 10 to 16). She disagreed that it was Mr Ng who tried to contact her about the sale of shares agreement.

57. On 23 October 2000, the Landlords solicitors Dennis Singham & Teresa Chan & Partners (Dennis Singham) sent an urgent fax to M N Swami. It stated:

No 33 Mohamed Sultan Road #01-01, #01-02, #01-03, #01-04 & #01-05/06 Singapore 238977

Tenancy Agreement dated 3rd September 1999

We refer to the above mentioned matter. We also refer to the writers conversation with you this afternoon.

We have been instructed by our client to inform you that under the terms of the Tenancy Agreement dated 3rd September 1999, your client was required by clause 2(j) to obtain the written consent of the owner before carrying out any alterations, structural or otherwise to the premises. It has come to our clients knowledge that on the 14th October 2000, your client caused her contractors to remove the party wall between the units and further removed the walls to the various toilets. This is a serious breach of the Tenancy Agreement particularly as our clients written consent was not obtained prior to the said works. Our client has also been advised that the said works constitutes a structural change which requires Building Control approval. To-date we understand that no such approval has been obtained.

On behalf of our client, we are hereby instructed to inform you that in view of your clients serious breach of the Tenancy Agreement our client exercises their right to re-enter into the premises under clause 4(e) of the Agreement whereupon this Tenancy shall absolutely determine without prejudice to our clients right of action or remedy in respect of the said breach.

Can you please let us know by the latest 4pm on 24th October 2000 when possession to the premises can be peacefully surrendered to our client. We trust that your client will heed our demand and that possession will be given back to our client peacefully.

58. In cross-examination, Ms Chan said that she had not informed Mr Ng about Dennis Singhams fax but in re-examination she claimed that she did.

59. Subsequently the Landlords solicitors met with M N Swami on 27 October 2000 as a result of

which it was agreed that:

> (a) Honey would surrender the Premises on 30 October 2000 on receipt of the return of the deposit less $10,000 i.e $96,000 less $10,000.
> (b) The Landlord would undertake the responsibility of reinstating the Premises.
> (c) There would be no further claims by the Landlord or Honey against each other.

The Premises were accordingly surrendered on 30 October 2000 and $86,000 was returned to Honey.

60. In response to an inquiry by Kenneth Tan dated 30 October 2000 about the draft agreement, M N Swami replied on 31 October 2000 to inform them that the Premises had been returned to the Landlord.

61. As far as reinstatement works were concerned, Ms Chan said she had consulted Mr Yeo and he had estimated reinstatement costs to be $300,000. Mr Yeo confirmed that it would cost not less than $300,000 (NE 66 line 15).

62. On some of the items constituting the Unauthorised Works, Mr Yeos evidence was that the cost of reinstating just the two party walls which were demolished on Mr Ngs instructions was estimated to be $25,000 to $30,000. The cost of reinstating the five toilets would be $10,000 each. On these items alone, the cost would be about $80,000.

63. Ms Chan said that Honey did not have the money to do reinstatement works and this was not challenged.

64. Mr Ngs evidence on doing reinstatement works vacillated.

65. Initially when his attention was drawn to the fax dated 18 October 2000 from M N Swami to Kenneth Tan, he said that he did not take steps to reinstate the Premises because he was of the view that this was not the solution (NE 16 line 16 to 21).

66. He also did not believe that the Unauthorised Works would jeopardize the tenancy agreement because they were not serious enough (NE 23 line 1 to 5). He had taken the position that they did not affect the structural integrity of the Premises.

67. Then he said that as events unfolded he did not even have the chance to reinstate or consider reinstating the Premises (NE 23 line 10 to 13).

68. In his view, the matter could have been regularised with a bit of communication with the Landlord. However his idea of regularisation was to show the Landlord that Honey was not just taking steps to rectify what had existed but to show his (Mr Ngs) plans to the Landlord so that the Landlord could get the Certificate of Statutory Completion for the Premises (NE 24 line 10 to 17).

69. He said he kept pursuing Ms Chan for the endorsement of the plans but he was not successful (NE 24 line 19 to NE 25 line 12).

70. On Ms Chans part, she said she took away the plan (or plans) from Mr Yeos office as she did not want Mr Ng to carry on with renovation work without the consent of the Landlord. She did not see any point in co-operating with Mr Ng in view of the Unauthorised Works (para 43 of her AEIC).

71. She disagreed that she was not willing to co-operate with Mr Ng to rectify the situation with

the Landlord (NE 40 line 9 to NE 41 line 8).

72. As it turned out, the demolished party walls and toilets were not reinstated and the Premises are currently used by someone else (NE 66 line 23 to NE 67 line 5).

ARGUMENTS AND MY CONCLUSION

73. Mr Ng initially took the position that the Unauthorised Works did not require the approval of any authority. He relied on a notice issued by the Building Control Division, Public Works Department dated 1 April 1998.

74. The notice states:

> NOTICE TO OWNER OF NON-RESIDENTIAL BUILDINGS
>
> EXEMPTION FROM APPROVAL FOR MINOR BUILDING WORKS
> AND ALTERATIONS TO NON-RESIDENTIAL BUILDINGS
>
> 1. Under the provisions of the Building Control Act (Cap. 29), certain building works and alterations to a non-residential building which are considered as minor or of no structural significance or impact do not require approval of plans or a permit for carrying out building works from the Building Authority. A list of these minor building works are given in Part A of the Schedule.
>
> 2. Whilst these minor building works and alterations may be exempted under the Building Control Act, some of the works may be subject to the control of other authorities. You are advised to consult or liaise directly with the relevant authorities listed in Part B of the Schedule before carrying out any of the minor building works.
>
> 3. .
>
> 4. .
>
> 5. If you need any further clarification, please check with officers of the PWDs Building Control Division.

75. Part A of the Schedule states:

> LIST OF MINOR BUILDING WORKS AND ALTERATIONS TO A NON-RESIDENTIAL BUILDING WHICH DO NOT REQUIRE APPROVAL OF PLANS OF BUILDING WORKS OR PERMIT TO CARRY OUT BUILDING WORKS FROM THE BUILDING AUTHORITY.
>
> 1 to 12. .
>
> 13. The creation of any opening in a non-load bearing wall or the sealing up of any wall opening.
>
> 14. The demolition, restoration or reinstatement of any non-load bearing wall.
>
> 15. Replacement or changing of windows and doors.

16. Replacement of existing floor and wall finishes.

17. Replacement or changing of any false ceiling with lightweight materials.

18. .

19. Erection or alteration of any partition or partition wall constructed of lightweight material.

20. .

21. .

22. .

23. .

24. .

25. In this list -

.

"non-load bearing wall" means a wall which supports no load other than its own weight; and

76. Part B of the Schedule states:

1. Before commencement of any of the minor building works listed out in Part A, please consult or liaise directly with the following authorities and comply with their requirements, wherever applicable:

(a) Chief Planner
Development Control Division
Urban Redevelopment Authority
45 Maxwell Road
URA Building
Singapore 069118

(b) Director
Fire Safety Bureau
25A Paterson Road
Singapore 238511

(c) Chief Engineer
Central Building Plan Unit
40 Scotts Road #12-00
Environmental Building
Singapore 228231

Footnote:

1. .

2. Exemption from the approval of plans and a permit to carry out building works should not be construed as exemption from compliance with the building regulations.

77. Appendix A states:

Appendix A: BUILDING WORKS WHICH DO NOT REQUIRE PLANNING PERMISSION FROM THE CHIEF PLANNER, URA

The following items can be processed by the Building Control Division without planning permission from the Chief Planner, URA:-

a. Internal re-arrangement of approved uses without change in primary use/quantum or floor area.

b. Internal partitioning or re-partitioning within tenanted areas excluding common areas.

c to q .

However, there was an important note which states:

The above does not apply to gazetted conservation areas and monuments. (Back to Table of Content)

79. As it turned out, the Premises were in a gazetted conservation area.

80. Even if no permission of any relevant authority was required, Honey was still required under Clause 2(h) of the tenancy agreement (set out in para 36 above) to ensure that any works mentioned in Clause 2(g) (which included the Unauthorised Works) be carried out by specialist sub-contractors to be approved by the Landlord and this was not done. Indeed, in para 8 of the Supplement to Plaintiffs Opening Statement, it was conceded that the Unauthorised Works were done without the concurrence of the Landlord.

81. I would add that it was also conceded that they were done without the concurrence of the Defendants although the faxes from Kenneth Tan dated 19 and 21 October 2000, which I have cited in paras 48 and 55 above, and Mr Ngs pleadings had alleged that the Defendants/Ms Chan had authorised such works.

82. Also, the insistence by Mr Ng that the Unauthorised Works were not structural was besides the point. They were done in breach of the tenancy agreement.

83. Accordingly the fact that the demolished party walls and demolished toilets have not been subsequently reinstated by the Landlord or a new tenant and the Premises are being currently used by a new tenant did not assist Mr Ng.

84. Furthermore, while he categorised the Unauthorised Works as minor, Mr Yeo described them as, Major and the landlord was very furious (NE 72 line 6). Also, Mr Ng did not call any architect to give evidence on the nature of the Unauthorised Works.

85. The truth of the matter was that Mr Ng was in too much of a rush to do the Unauthorised Works, because the faster I finish, the earlier I can open the premises for business (NE 9 line 10).

86. He had assumed that the Landlord would not mind the Unauthorised Works and would allow him to get the paper work done concurrently with the physical works as, in his view, that was the normal practice. In my view, even if this was the normal practice, which would be against the law, a landlord should at least be notified in advance of such works and his concurrence obtained.

87. Mr Ng had said he did not want Honeys tenancy to be jeopardized when he made some advance payments to or on behalf of Honey. Yet the Unauthorised Works did precisely just that.

88. Mr Edwin Kung, acting for Mr Ng, submitted that Ms Chan and the other Defendants were repudiating the sale agreement and were evidencing an intention not to be bound by it because they had put Honey in the position where Honey would no longer have the tenancy. He also submitted that Mr Ng had rescinded the sale agreement by a subsequent letter from Kenneth Tan dated 6 November 2000.

89. In my view, there was no doubt that Ms Chan wanted to proceed with the sale of the shares in Honey but the Unauthorised Works had put a spanner in the works.

90. The surrender of the tenancy was not to repudiate the sale agreement but was to mitigate the damage caused by Mr Ngs irresponsible action as the Landlord was threatening to terminate the tenancy, forfeit the deposit and claim reinstatement and legal costs.

91. Any suggestion that the draft agreement still had not been prepared by her solicitors by 18 October 2000, must also be seen in the context of the Unauthorised Works and the Landlords reaction thereto. Indeed, in para 7 of the Supplement to Plaintiffs Opening Statement, it was conceded that the Defendants had taken steps to get the agreement drafted.

92. In addition, any suggestion that Ms Chan was subsequently withholding plans must be seen in the context that she had trusted Mr Ng by handing over the keys to the Premises only to discover that he had carried out the Unauthorised Works. There was otherwise no reluctance on her part to assist him. As I have mentioned, earlier she had on 10 or 11 October 2000, at his request, when she met him at a hotel, signed some renovation plans.

93. The main point raised for Mr Ng was that Honey should not have surrendered the Premises to the Landlord.

94. On this point, Mr Kung did not assert that there was no breach of the tenancy agreement.

95. Instead, he argued that the notice from the Landlords solicitors Dennis Singham was invalid, relying on s 18(1) and (10) of the Conveyancing and Law of Property Act (Cap 61) (CLPA).

96. Section 18(1) CLPA states:

> Restrictions on and relief against forfeiture of leases.
>
> 18. (1) A right of re-entry or forfeiture under any provision or stipulation in a lease, for a breach of any covenant or condition in a lease, shall not be enforceable, by action or otherwise, unless the lessor serves on the lessee a

> notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

97. Section 18(10) CLPA states:

> (10) This section shall apply to leases before, on or after 1st August 1886, and shall have effect notwithstanding any stipulation to the contrary.

98. Mr Kung argued that under s 18(1) CLPA the notice from Dennis Singham must give sufficient details of the breach by Honey and this was not done.

99. In *Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd & Ors* [1999] 1 SLR 263, Chao Hick Tin J (as he then was) said that a valid notice under s 18(1) CLPA must contain sufficient particulars of the alleged breach. With respect, I agree.

100. In the present case before me, the notice from Dennis Singham, which is set out in para 57 above, did set out some particulars of breach i.e the removal of the party wall between the units and the removal of walls to the toilets.

101. However, it was not necessary for me to decide whether the notice constituted sufficient particulars for the following reasons.

102. First, the reference therein to Clause 2(j) of the tenancy agreement was wrong. Clause 2(j) refers to the consent of the relevant authorities, and not of the Landlord.

103. Secondly, the breach was capable of remedy but the Landlord did not require Honey to remedy the breach. This was contrary to s 18(1) CLPA.

104. I accepted that the notice was invalid. However it did not follow that Honey should not have surrendered the Premises.

105. First, it would not serve much purpose to challenge the validity of the notice unless Honey intended to carry out reinstatement works for which it needed more time. After all, the Landlord could have sent a valid notice if the validity of the first notice had been challenged.

106. Secondly, it was not disputed that Honey did not have money to do reinstatement works. Ms Chan also accepted that she was not aware of Honeys right to do reinstatement works under s 18(1) CLPA.

107. It was put to Ms Chan during her cross-examination that Mr Ng was not aware that the Landlord was going to terminate the tenancy and Mr Ng did not have an opportunity to carry out reinstatement works (NE 43 line 8 to NE 44 line 20).

108. I accepted that the subsequent notice dated 23 October 2000 from Dennis Singham was not brought to the attention of Kenneth Tan or Mr Ng until after the Premises were surrendered, although Ms Chan had various telephone discussions with Mr Ng.

109. On this point, I did not accept Ms Chans belated evidence in re-examination that she had

mentioned the written notice from Dennis Singham to Mr Ng in telephone discussions with Mr Ng between 24 to 27 October 2000. In cross-examination, she had already said that she had not done so.

110. I would add that there was no suggestion that the omission was deliberate. Indeed, Ms Chan and Honey were under considerable pressure from the Landlord to respond to the Landlords threat quickly.

111. In any event, the omission did not mean that Mr Ng was completely unaware of the danger that the Landlord might terminate the tenancy. The danger had already been mentioned in the fax from M N Swami to Kenneth Tan dated 18 October 2000 (see para 47 above).

112. As for the allegation that Mr Ng did not have an opportunity to carry out reinstatement works, the truth of the matter was that Mr Ng did not intend to do reinstatement works.

113. His intention was to carry on with what he had done. That is why he asserted during cross-examination that he still expected the Landlord to endorse his plans notwithstanding the Unauthorised Works (NE 17 line 15 to 17, NE 23 line 22 to 24, NE 24 line 10 to 17).

114. That is also why Mr Ng did nothing to redress the situation or placate the Landlord. Even if Ms Chan did not orally tell him about the inspection on 20 October 2000, he knew about it from the fax dated 20 October 2000 from M N Swami to Kenneth Tan, pursuant to which one key was sent via a messenger. He did not turn up for the inspection. He also avoided approaching the Landlord on the excuse that he had no contractual relationship with the Landlord. He could and should have offered to see the Landlord with Ms Chan but he did not. Yet he had the temerity to say that the matter could have been regularised with a bit of communication with the Landlord.

115. Furthermore, while Mr Kung criticised Honey for not relying on s 18(1) CLPA, Kenneth Tan themselves did not raise this provision at the material time. I find that they themselves had been unaware about it or had forgotten about it then. That is why the question of reinstatement under s 18(1) CLPA was never raised in their faxes/ correspondence to M N Swami before 30 October 2000. Even after 31 October 2000 when they were informed about the surrender of the Premises, they did not assert in any fax or correspondence that reinstatement works should have been done or that Mr Ng had been denied the opportunity of doing such works. This was also not raised in Mr Ngs pleadings.

116. I was of the view that s 18(1) CLPA was raised as an afterthought to extricate Mr Ng from the mess he had created.

117. Mr Kung also argued that the chain of causation had been broken by the act of surrendering the Premises.

118. I did not agree. The surrender of the Premises was an ordinary and natural consequence of the Unauthorised Works.

119. It may be that Honey could have mitigated by doing reinstatement works but that is a different point which was not specifically pleaded by Mr Ng.

120. Secondly, Honey had acted on the advice of its architect Mr Yeo who had estimated reinstatement costs to be $300,000 and Honey did not have this sum or even the $80,000 I have mentioned in para 62 above. It must be remembered that Honey was in dire financial straits, and that

is why it had to obtain advance payment from Mr Ng.

121. Thirdly, Honey had acted on the advice of its solicitors in agreeing to surrender the Premises with a forfeiture of only $10,000 of its deposit. As I have said, the intention behind the surrender was with a view to mitigating its damages.

122. Fourthly, at no time prior to 30 October 2000 did Kenneth Tan suggest that reinstatement works be done.

123. Fifthly, everything was happening very quickly, starting with the shock of learning about the Unauthorised Works and the Landlords fury.

124. It may well be that the Landlord was taking advantage of the situation but it was a situation created by Mr Ng.

125. In all the circumstances, I did not think that Honey had acted unreasonably or had failed to mitigate (assuming this had been pleaded) by surrendering the Premises.

126. Accordingly, I was of the view that it was not Ms Chan and the Second and Third Defendants who were in breach of contract but Mr Ng. His purported rescission of the sale agreement was wrongful.

127. By his deliberate act in carrying out the Unauthorised Works, he had made it impossible for the First, Second and Third Defendants to carry out their part of the sale agreement. In my view, this entitled them not only to be excused from being unable to provide the tenancy and carry on with the sale agreement but also to claim damages from him.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER

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