# Golden Village Multiplex Pte Ltd v Marina Centre Holdings Private Limited [2002] SGCA 6

**Case Number** : CA 600084/2001

**Decision Date** : 25 January 2002

**Tribunal/Court** : Court of Appeal

**Coram** : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

**Counsel Name(s)** : Engelin Teh SC (instructed), Leonard Hazra and Loh Lik Peng (David Lim & Partners) for the appellants; Goh Kok Yeow and Jeanette Lee (De Souza Tay & Goh) for the respondents

**Parties** : Golden Village Multiplex Pte Ltd — Marina Centre Holdings Private Limited

*Land – Conveyance – Leases – Form – Lease of registered land exceeding seven years – Whether lease must be in approved form – s 87(1) Land Titles Act (Cap 157, 1994 Ed)*

*Landlord and Tenant – Agreements for leases – Lease not in approved form – Whether void at law -Whether agreement devoid of any legal effect or incapable of creating any rights – Whether agreement enforceable in equity – ss 2 & 53(1) Conveyancing and Law of Property Act (Cap 61, 1994 Ed) – s 45(2) Land Titles Act (Cap 157, 1994 Ed)*

*Planning Law – Planning control – Development and subdivision of land – Agreement to lease premises – Lease not in approved form – Whether breach of provisions of Planning Act (Cap 232, 1990 Ed) rendering lease void and unenforceable – ss 2(2) & 10(3) Planning Act (Cap 232, 1990 Ed) – s 165(1) Land Titles Act (Cap 157, 1994 Ed)*

## Judgment

### GROUNDS OF DECISION

1. This was an appeal from the decision of Woo Bih Li JC dismissing an application by the appellants, Golden Village Multiplex Pte Ltd ('Golden Village'), for an order that the agreement for a lease dated 28 February 1995, which they made with the respondents, Marina Centre Holdings Pte Ltd ('Marina Centre'), was void, illegal and/or unenforceable. We dismissed the appeal and now give our reasons.

### *Background facts*

2. The relevant facts giving rise to the appeal were not in dispute and were briefly these. Marina Centre own and manage a building known as 'Leisureplex' and the adjoining shopping mall, both of which are located in a complex known as the Marina Square. By an agreement dated 28 February 1995 made between them and Golden Village, they agreed to lease to Golden Village the 3rd and 4th levels and a part of the 2nd level of the Leisureplex, more particularly described in the Agreement (collectively called 'the premises') to be used as a cinema complex for a term of 15 years. The entire complex stands on lots 357 and 358 of Town Subdivision 11 situate at Raffles Boulevard. Annexed to the Agreement was a form of the lease ('annexed lease') which was agreed to be executed by the parties eventually. The agreement and the annexed lease are together hereinafter referred to as 'the Agreement'. Clause 8 of the Agreement provided as follows:

> 8. TENANT TO EXECUTE THE ANNEXED LEASE
>
> The Tenant shall on or before the time fixed for the commencement of the TERM upon receipt of a twenty-eight (28) day written notice from the Landlord duly

execute the ANNEXED LEASE with such amendments or variations thereto only as may be agreed between the parties hereto.

3. The annexed lease was not in the form prescribed under the Land Titles Act (Cap 157, 1994 ed) ('LTA'), and therefore was not capable of being registered with the Registry of Titles. It was not the intention of Marina Centre to apply for and obtain subdivision approval for the premises comprised in the Agreement and accordingly no registrable lease could be granted to Golden Village. This intention was communicated to Golden Village at an early stage in the negotiations. Initially, this was not acceptable to Golden Village, which required the proposed lease to be registered with the Registry of Titles. There were subsequent negotiations between them on the point, and eventually Golden Village were prevailed upon to accept the lease in the form of the annexed lease. The Agreement was duly signed by Golden Village and was returned to Marina Centre on 9 January 1995 for stamping. In July 1996 or thereabouts, Golden Village took possession of the premises pursuant to the Agreement.

4. To reflect the agreement that the lease of the premises to be executed by the parties would not be in a registrable form, cl 9 of the Agreement provided as follows:

> 9. COVENANTS BY THE TENANT
>
> The Tenant hereby covenants with the Landlord as follows:-
>
> 9.1 That it shall during all periods of use and/or occupation of the PREMISES prior to the commencement of the TERM be bound by all terms, covenants, conditions, stipulations and provisions set out in the ANNEXED LEASE so far as the same may be applicable.
>
> 9.2 That it shall not, during the continuance of the TERM, register the lease to be granted under this Agreement to Lease and the ANNEXED LEASE at the Registry of Land Titles and Deeds, Singapore or at any other registry in Singapore, or to require the Landlord to subdivide the BUILDING or any part thereof or to do any act or thing which could result in the Landlord being required to subdivide the BUILDING or any part thereof.

5. Nothing of any consequence in relation to the Agreement happened until some four years later. On 12 April 2000, Golden Village wrote to Marina Centre requesting a formal lease of the premises for their review and execution. Marina Centre forwarded a lease to Golden Village for execution. In response, the latter commented that the terms set out in the enclosed lease were the same as those set out in the annexed lease. They further pointed out that Marina Centre had not forwarded to them a lease in an approved form under the LTA. In reply, Marina Centre drew Golden Village's attention to cl 9.2 of the agreement. Further correspondence between them ensued, and Golden Village insisted that the lease had to be registrable under the LTA. Thereafter, from January 2001, Golden Village failed or refused to pay rent for the premises, and Marina Centre called on the guarantee issued by The Hongkong And Shanghai Banking Corporation Ltd for the sum of $198,971.20 in payment to account of the rent of $215,245.28.

6. On 12 February 2001, Golden Village took out an application by way of an originating summons seeking a declaration that the Agreement was void, illegal and/or unenforceable and consequential relief. Before the court below, several arguments were advanced on behalf of Golden Village. It was contended, inter alia, that (a) there was a failure of consideration or that the consideration was illusory, since Golden Village would not be getting a lease which could be registered; (b) that although they knew they would not get a registrable lease, that was due to a mistake of law which was shared

by them and Marina Centre, as both parties thought that the agreement had conferred some kind of interest in the premises; (c) the lease was tainted with illegality and unenforceable as it was in breach of the Planning Act (Cap 232, 1990 Ed) ('Planning Act') on the ground that the lease constituted a subdivision of the premises from the rest of the building without complying with the requirements of the Planning Act.

***The decision below***

7. The judge held that the Agreement was void at law. In such an event, the position at common law was that the term created was a tenancy at will, and since Golden Village had entered into possession of the premises and were paying rent, a periodic tenancy was created. However, in equity, Golden Village had a term for the period as stated in the agreement, and equity would also grant specific performance of the Agreement, unless by reason of the conduct of the party concerned the court refuses to grant any relief. The judge relied also on s 45(2) of the LTA which provides that nothing therein is to be construed as preventing any unregistered instrument from operating as a contract. The judge held that in the present case, Golden Village would not be getting a registrable lease under the Agreement. That notwithstanding, should Marina Centre choose to jeopardise Golden Village's interest as a tenant in the premises, their interest would be protected by the court granting the suitable remedy.

8. Finally, the judge held that s 2(2) of the Planning Act applied to instruments in an approved form. Thus, if a lease was in an approved form and was executed without obtaining a subdivision from the relevant authorities, the lessor would be in breach of s 10(3) read with s 2(2) of the Planning Act. As the Agreement was not in an approved form, there was no breach of the Planning Act. In any case, the judge held that breach of the Planning Act did not necessarily mean that the lease was void and unenforceable.

***The appeal***

9. There were mainly three issues raised in this appeal. The first is whether the Agreement being void at law would operate as a contract in equity. The second is whether the Agreement contravened the provisions of the Planning Act on the ground that no sub-division approval had been obtained. The third issue is whether under s 87 of the LTA the lease granted to Golden Village must be in the approved form.

***Equitable lease***

10. The first submission of counsel for Golden Village was that the Agreement was void at law under s 53(1) of the Conveyancing and Law of Property Act (Cap 61, 1994 ed) ('CLPA'). That, in our view, was correct, as s 53(1) provides:

> 53.–(1) A conveyance of any estate or interest in land other than a lease for a period not exceeding 7 years at a rack rent shall be void at law unless it is by deed in the English language.

Plainly the Agreement fell within the terms of s 53(1) of the CLPA and was void at law. Under s 2 of the CLPA, the term 'conveyance' includes a lease, and a 'lease' includes 'an agreement for a lease where the lessee has become entitled to have his lease granted'. In this case, since the Agreement

was not executed by way of a deed, it was therefore void under s 53(1) of the CLPA.

11. Next, counsel submitted that the Agreement not being registered under the LTA was ineffectual to pass any estate or interest in the premises. Here counsel was also correct. Section s 45(1) of the LTA provides as follows:

> (1) No instrument until registered as in this Act provided is effectual to pass any estate or interest in land under the provisions of this Act, but upon registration of an instrument the estate or interest therein specified shall pass, or the land shall become liable as security for the payment of money (as the case may be), subject to such covenants and conditions as are set forth in the instrument and are capable of taking effect, and subject to such covenants and conditions as are by law declared to be implied in instruments of a like nature.

12. These submissions, though incontrovertible, did not conclude the matter in issue. As the judge below held, and we agreed, it does not follow that the Agreement is devoid of any legal effect and is incapable of creating any rights. The Agreement operates as a contract and the terms thereof and the rights of the parties thereunder are enforceable in equity under the doctrine of *Walsh v Lonsdale* (1882) 21 Ch D 9. It will be treated as an equitable lease for the term agreed upon and as between the parties to the agreement is equivalent to a lease at law. The authorities in support are legend. No less than four Australian cases have been cited by the judge and were considered by him in depth: *Leitz Leeholme Stud Pty Ltd v Robinson* [1977] 2 NSWLR 544; *The Progressive Mailing House Proprietary Limited v Tabali Proprietary* Limited [1985] 157 CLR 17; *Chan v Cresdon Pty Ltd* [1989] 168 CLR 242 FC; *Telado P/L v Vincent & Anor* [1996] NSW Conv R 56,035. For our purpose, it is sufficient to quote below the following passage of the judgment of Mason J in *The Progressive Mailing House Proprietary Ltd v Tabali Proprietary Ltd* (supra) at p 26:

> In equity, however, a written lease not under seal was regarded as evidencing an agreement for lease. As an agreement for lease was capable of specific performance equity would decree specific performance of the written lease by ordering the execution of a lease under seal. In the meantime, in accordance with the doctrine of *Walsh v Lonsdale* (1882) 21 Ch D 9, the relationship between the parties in equity was that of landlord and tenant: *Carberry v Gardiner* (1936) 36 SR (NSW) at p 569. The landlord could, if necessary, be restrained by injunction from acting on the footing that the other party was merely a tenant at will or a tenant from year to year: *Walsh v Lonsdale*; *Dockrill v Cavanagh* (1944) 45 SR (NSW) 78 at p 83.

13. Counsel for Golden Village, while accepting these authorities, submitted that in this case, under the Agreement, the lease agreed to be executed by the parties was in the form not registrable under the LTA. Therefore, the Agreement was not capable of being enforced by specific performance in the sense that the execution of a registrable lease and registration thereof with the Registry of Titles could not be specifically ordered; that was not what was provided in the Agreement. In other words, the equitable remedy of specific performance according to the principles in *Walsh v Lonsdale* (1882) 21 Ch D 9 would not be available to Marina Centre.

14. This argument was totally misconceived. Once an agreement is enforceable in equity, the court in enforcing it is not confined to giving only the remedy of specific performance. In enforcing an agreement, the court may grant such other remedy as it may deem fit and as circumstances may require, for instance, an injunction restraining a party from breaching or continuing to breach an agreement or a mandatory injunction compelling a party to perform certain acts under the agreement.

A clear statement in support is the following passage of the judgment of Mason CJ, Brennan, Deane and McHugh JJ in *Chan v Cresdon Proprietary Ltd* (supra) at p 252:

> For present purposes these authorities establish two propositions. First, the court's willingness to treat the agreement as a lease in equity, on the footing that equity regards as done what ought to be done and equity looks to the intent rather than the form, rests upon the specific enforceability of the agreement. Secondly, an agreement for a lease will be treated by a court administering equity as an equitable lease for the term agreed upon and, as between the parties, as the equivalent of a lease at law, though the lessee does not have a lease at law in the sense of having a legal interest in the term.
>
> The first proposition requires some elaboration or qualification in order to accommodate what has been said in later cases. Although it has been stated sometimes that the equitable interest is commensurate with what a court of equity would decree to enforce the contract, whether by way of specific performance (*Connolly v Ryan* (1922) 30 CLR 498, at pp 506-507; *Brown v Heffer* (1967) 116 CLR 344, at p 349; *Chang v Registrar of Titles* (1976) 137 CLR 177, at pp 184-185, 189-190), injunction or otherwise (*Taliby v Official Receiver* (1888) 13 App Cas 523, at pp 546-549; *Redman v Permanent Trustee Co* (1916) 22 CLR, at p 96; *Legione v Hateley* (1983) 152 CLR 406, at pp 446, 456), the references in the earlier cases to specific performance should be understood in the sense of Sir Frederick Jordan's explanation adopted by Deane and Dawson JJ in *Stern v McArthur* (1988) 165 CLR 489, at p 522:
>
> > "Specific performance in this sense means not merely specific performance in the primary sense of the enforcing of an executory contract by compelling the execution of an assurance to complete it, but also the protection by injunction or otherwise of rights acquired under a contract which defines the rights of the parties': … 'Chapters on Equity in New South Wales', *Select Legal Papers*, 6th ed (1947), p 52, n.(e)."
>
> In relation to the second proposition stated above Maitland, in his *Lectures on Equity*, 2nd ed (1936), p 158, in a statement quoted by Latham CJ in *Williams v Frayne* (1937) 58 CLR, at p 720, commented:
>
> > "An equitable right is not equivalent to a legal right; between the contracting parties an agreement for a lease may be as good as a lease … But introduce the third party and then you will see the difference."

15. In our judgment, in protecting the rights of the parties under the Agreement in equity, the appropriate equitable remedy is not confined by *Walsh v Lonsdale* principles to the strict and narrow meaning of specific performance. It is open to the court to make the appropriate orders to protect the rights of the parties. Hence, notwithstanding that the Agreement remains unregistrable under the LTA, the rights of the parties thereunder are enforceable in equity and will be protected. We therefore agreed with the judge that a lease or an agreement for a lease, which is not by deed or in an approved form under the LTA, is nevertheless enforceable in equity under the *Walsh v Lonsdale* principles.

16 It bears mentioning that that the LTA has specific provisions which are intended to preserve and protect equitable interests in land. In so far as a lease is concerned, s 45(2) of the LTA reads:

> Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract….

***Planning Act***

17. The next issue turns on the construction of certain provisions of the Planning Act. On this issue, counsel for Golden Village raised extensive arguments contending that the Agreement was in breach of the Planning Act as Marina Centre had subdivided the premises without obtaining the requisite permission from the relevant authority. As such, the Agreement was illegal and void at law and in equity.

18. On this issue we need to turn to the relevant provisions of the Planning Act. First, s 10 by sub-s (3) provides:

> (3) No person shall subdivide any land unless —
>
> > (a) he has obtained the written permission of the competent authority…
> >
> > (b) he has made an application to the Collector and has deposited a sum sufficient to cover the fees for the survey of all lots comprised in the permitted subdivision…"

The penalty for a breach of this subsection is provided by sub-s(8) of s 10, which is as follows:

> (8) Any person who contravenes subsection (1) or (3), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $3,000 and, in the case of a continuing offence, to a further fine not exceeding $100 for every day after the first day during which the offence continues after conviction.

Next, the term 'to subdivide' is specifically defined in s 2(2) which is as follows:

> … for the purposes of this Act, a person is said to subdivide land if, by any deed or instrument, he conveys, assigns, demises or otherwise disposes of any part of the land in such a manner that the part so disposed of becomes capable of being registered under the Registration of Deeds Act (Cap. 269) or, in the case of registered land, being included in a separate folio of the land-register under the Land Titles Act (Cap. 157), and "subdivide" and "subdivision" shall be construed accordingly:
>
> Provided that a lease for a period not exceeding 7 years without the option of renewal or purchase shall not be deemed to be a disposal within the meaning of this definition.

19. The Agreement, being an agreement for a lease of the premises comprised therein for 15 years, was clearly a disposal in relation to these premises. But the question is whether such premises are 'capable of being included in a separate folio of the land-register under the Land Titles Act'. In our

opinion, the answer lies in s 51 and more importantly in 165 of the LTA. Section 51 provides as follows:

> (1) The forms from time to time approved by the Registrar shall be used for all instruments intended to affect registered land.
>
> (2) The Registrar may register any instrument containing departures from an approved form and the instrument shall be deemed to be in a form approved by the Registrar.

20. Thus, s 51(1) of the LTA requires approved forms for dealing in land to be used for the purpose of registration. In the present case, the Agreement was not in an approved form, and cannot be registered under the LTA. However, this is only a matter of form, and the Registrar has discretion to register an instrument containing departures from the approved form. In our opinion, the real difficulty in the way of counsel's argument is s 165 of the LTA which, in so far as relevant, provides:

> (1) Except as provided in this section, the Registrar shall not register any instrument affecting part of the land in a folio until he is satisfied that -
>
> > (a) the authority for the time being charged with the duty of controlling or supervising the subdivision of the land has certified that the lawful requirements of that authority relating to subdivision have been complied with; ...
> >
> > (b) the boundaries and dimensions of part of the land in a folio described in an instrument are in accordance with the final boundaries and dimensions shown in the plan lodged with and approved by the Chief Surveyor.
>
> (2) Where the Registrar has created a new folio pursuant to a registration of part of the land which is not conclusive as to boundaries and dimensions, he shall enter thereon a caution to that effect, and he shall cancel that caution when the boundaries and dimensions have been shown on the plan lodged with and approved by the Chief Surveyor.

The effect of these provisions is that an instrument affecting a part of the land not included in a separate folio of the land-register is not registrable, unless subdivision approval for that part of the land has been obtained from the relevant authority under the Planning Act. In the instant case, the Agreement affects only those premises, which form part of the land included in the folio of the land-register, and no subdivision approval for those premises have been obtained. That being the position, the Agreement is not registrable under s 165(1) of the LTA and in consequence the premises comprised therein are not 'capable of being included in a separate folio of the land-register' under the LTA.

21. A case directly in point is *Chin Hwa Trading Pte Ltd v United Overseas Bank Ltd* [1986] 1 MLJ 207. There, a sub-sub-purchaser purchased an uncompleted property put up at an auction sale by the mortgagee bank. The property was one of the lots that the original purchaser had subdivided into separate factory units without having first obtained the requisite permission from the relevant authorities. Following a notice to complete, the sub-sub-purchaser made an application to court for determination whether the auction sale agreement was unenforceable because it amounted to an agreement to complete the sale and purchase of property by an act in breach of the equivalent

sections of the Planning Act relating to subdivision. The sub-sub-purchaser argued that the contract was not one that the mortgagee could lawfully perform because in order to perform it, the mortgagee, inter alia, had to execute an instrument assigning to the sub-sub-purchaser 'all the estate right and title to the property', and it was contended that this instrument amounted to a subdivision of the land within the meaning of the Planning Act. Wee Chong Jin CJ approached the argument as follows at p 209:

> First, it is contended on behalf of the sub-sub-purchaser that as no approval has been given by the competent authority as provided in section 9(3)(a) of the Planning Act for the subdivision of the ground floor of Block B into more than one separate factory unit, the auction sale agreement of April 18, 1984 is "tainted with illegality". It is said that the contract is illegal because it amounts to an agreement to complete the sale and purchase of the property by an illegal act in breach of section 9(3) and punishable under section 9(9).
>
> The argument, as I understand it, is that it is a contract that the mortgagee could not lawfully perform because in order to perform it the mortgagee has to execute an instrument assigning to the sub-sub-purchaser, *inter alia*, "all the estate right and title to the property" and which instrument subdivides land within the meaning of the Planning Act.

The learned Chief Justice then came to the following conclusion at p 210:

> Whether or not the argument advanced on behalf of the sub-sub-purchaser is right depends on the construction of the expression "subdivide" as defined in section 2. In my opinion it must be implicit in that definition that it is the instrument which becomes capable of being registered or being included in a separate folio of the land register before a person can be said to subdivide land within the meaning of the Planning Act. The reason is because the Registration of Deeds Act and the Land Titles Act provide for the registration of instruments affecting land and not of land.
>
> In the present case the agreement itself is clearly not capable of becoming registered under the Registration of Deeds Act or being included in a separate folio of the land register under the Land Titles Act and accordingly the agreement does not subdivide land within the meaning of the Planning Act and does not infringe the provisions of section 9(3) of the Planning Act.

There is only a minor point on which we did not quite agree with the learned Chief Justice. His Honour held that it was implicit in s 2 of the Planning Act that the matter to be considered as capable of being recorded in a separate folio was the instrument disposing of the part of the land in question. However, in our opinion, on a plain reading of s 2, the matter to be considered for the purpose was that part of the land disposed of by the instrument, and not the instrument itself. In all other respect, we agree fully with the learned Chief Justice. In the instant case, Marina Centre by the Agreement leased those premises comprised therein to Golden Village, but no subdivision approval for those premises had been obtained under the Planning Act. That being so, the Agreement is not capable of being registered under the LTA and following from this the premises comprised therein are not capable of being included in a separate folio of the land-register. It further follows that the Agreement did not amount to a subdivision of a part of the land in question within the meaning of the Planning Act.

***Lease not in approved form***

22. Finally, counsel for Golden Village sought to argue that s 87(1) of the LTA is a mandatory section, and that if registered land was to be leased for more than seven years, then the instrument used must be in the approved form so that it can be registered. She submitted that a failure to do so would render the agreement illegal and unenforceable, and that was what had happened in this case.

23. We were unable to agree. Section 87(1) reads as follows:

> (1) Registered land may be leased for any term of years exceeding 7 years by an instrument of lease in the approved form.

In our opinion, s 87(1) of the LTA is by its terms not a mandatory provision. There is nothing in the context of that section or the surrounding circumstances which impelled us to construe it as a mandatory provision. Accepting the argument advanced on behalf of Golden Village would amount to requiring all leases exceeding seven years to be registered. This cannot be correct as the Torrens system of registration permits and recognises the existence of interests in land other than registered interests, and in particular, equitable interests. Furthermore, s 87 (2) of the LTA provides:

> (2) The Registrar shall not register any lease unless —
>
> (a) the term is expressed to exceed 7 years;
>
> (b) the date of commencement of the term and its maximum duration are certain; and
>
> (c) the lease purports to confer on the lessee exclusive possession of land.

24. This follow-on provision does not in any way suggest that s 87(1) of the LTA is mandatory. Rather, it merely limits the Registrar's discretion to register a lease subject to the satisfaction of the conditions listed therein. Accordingly, in this case, the equitable lease continued to be valid and subsisting, and there was therefore no illegality involved in the Agreement.

***Conclusion***

25. Our conclusion is that Golden Village had not bargained for a lease with indefeasible title as provided for under the LTA. What it had agreed to, however, was an unregistrable lease which, while it may not be registered under the LTA, created an equitable interest in land, which as between the parties is capable of being specifically enforced. The unregistrable lease did not amount to subdivision of the land as defined under the Planning Act and so had not breached any of the provisions stated therein.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

L P THEAN
Judge of Appeal

Sgd:

CHAO HICK TIN
Judge of Appeal

Copyright © Government of Singapore.