Ngee Ann Development Pte Ltd v Nova Leisure Pte Ltd
[2003] SGHC 168

Case Number : OS 1784/2002

Decision Date : 06 August 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : AndrewYeo and Desmond Ho (Allen & Gledhill) for the plaintiff; Quek Mong Hua and Daphne Lim (Lee & Lee) for the defendant

Parties : Ngee Ann Development Pte Ltd — Nova Leisure Pte Ltd

Contract – Contractual terms – Rules of construction – Importance of a plain reading of written text – Context of written text as an aid to interpretation.

Landlord and Tenant – Termination of leases – Surrender

Landlord and Tenant – Rent and service charges – Contracting parties must expressly provide for the payment of a compensation sum in the event of a surrender.

Restitution – Unjust enrichment – No unjust enrichment where there has not been a breach of the lease.

1 The plaintiffs are the owners of premises on the 8th floor and parts of the 7th floor of the podium of the Ngee Ann City building. They leased the premises to the defendants by a lease agreement dated 2 September 1999. This was a renewed, but re-negotiated lease, the original lease dated 25 March 1994 having expired. The 2 September lease was formally drawn up by the plaintiff's solicitors and ran to 41 pages. The salient terms of the lease are as follows. The monthly rental payable on the first day of each month was $242,475. The lease was for a total of five years. The defendants were given a total of six rent-free months. It was provided in cl 1.3 of Schedule 4 in these terms:

> '1.3 In consideration of the Tenant fulfilling the full Term of this Lease and complying with all the terms and conditions applicable to this Lease, the Tenant shall be granted the following rent-free periods (the 'Rent-Free Period'):-
>
> (a) two (2) months from 21st June 1999 to 20th August 1999;
>
> (b) two (2) months from 21st June 2000 to 20th August 2000; and
>
> (c) two (2) months from 21st June 2001 to 20th August 2001.
>
> For the avoidance of doubt (if any), Service Charge shall continue to be payable during the Rent-Free Period.'

In short, the defendants get two months free of rent each year for the first three years, and no rent-free periods in the fourth and fifth years.

2 It is also important to note the termination clause which provided for the eventuality of termination other than the effluxion of time. Clause 7 provides as follows:

> '7. Termination

7.1 Either party shall be entitled to terminate this Lease and the Term by giving to the other not less than six (6) months written notice to that effect. Upon the expiry of such notice, this Lease and the Term shall absolutely cease and determine and the Tenant shall deliver vacant possession of the Demised Premises to the Landlord in accordance with the terms of this Lease, but without prejudice to any right of action by the Landlord in respect of any antecedent breach of this Lease by the Tenant.

7.2 If the Term of the Lease is terminated, the grant of the Rent-Free Period under paragraph 3.1 of Schedule 4 shall absolutely cease and terminate. In addition, the Tenant shall compensate and pay to the Landlord within fourteen (14) days of the Landlord's written notice to the Tenant:-

(a) (if the termination is effected by the Tenant pursuant to clause 7.1 above), the Tenant shall pay to the Landlord half (½) of the Compensation Sum;

(b) (if the termination is effected by the Landlord pursuant to clause 7.1 above), the Tenant shall not be required to pay the Compensation Sum; or

(c) (if the termination is effected by the Tenant unlawfully and prematurely for any reason whatsoever or the termination is effected by the Landlord in consequence of the Tenant's breach of the terms and conditions applicable of this Lease), the Tenant shall pay to the Landlord the full Compensation Sum, without prejudice to any rights or remedies of the Landlord.

For the purpose of this clause, the term 'Compensation Sum' shall mean the Rent which would have been payable in respect of the Demised Premises during the Rent-Free Period but prior to the date of termination if such Rent-Free Period had not been granted.'

Hence, either party may terminate the lease by giving six months' notice. However, if the defendant-tenants gave notice, they were obliged to pay the plaintiffs, half of the 'Compensation Sum'. The 'Compensation Sum' was defined as the rent which would otherwise have been payable during the rent-free periods prior to the giving of notice of termination. Thus, Mr Andrew Yeo, who appeared on behalf of the plaintiffs, accepted that had the defendant given notice after the first year, the 'Compensation Sum' would be half of two-months' rent (i.e. one month's rent); and if they had given notice after the third year, it would have been half of six-months' rent (i.e. a total of three months' rent). But if the landlord terminates, the tenant need not pay any compensation at all.

3 On 28 February 2002, after negotiations, the plaintiffs and the defendants signed a 'Surrender Agreement' in which the defendants surrendered the lease and premises to the plaintiffs with effect from the 28 February 2002. By cl 3.1 the surrender was without prejudice to 'the obligations and undertakings to be performed by the [defendants] under the provisions of the lease prior to the surrender date and which remain unperformed'. A new tenant took over from 1 March 2002, that is, the day after the Surrender.

4 By this originating summons the plaintiffs prayed for an order that the defendants pay them six months of rent being the six months rent-free period under the lease. The total claimed is $1,454,850. The plaintiffs' ground was that the six months rent-free period was given to them on the condition that the defendants do not terminate the five-year lease otherwise than by effluxion of time. The plaintiffs also couched their claim for payment in part by way of quantum meruit or quantum valebat or restitution. By the time the matter came before me, Mr Yeo had virtually abandoned the first two alternative basis and relied only on restitution as the main alternative basis

of claim.

5 Mr Yeo presented the plaintiffs' case on the basis of cl 1.3 of Schedule 4 as he construed it. Counsel's argument was that this clause ought to be read as:-

> 'In consideration of the [defendants] fulfilling the full term of this lease the [defendants] shall be granted the following rent-free periods:-'

From this, counsel then argued that since the defendants did not sit out the full term, namely five years, they were, therefore, not entitled to the rent-free periods. Hence, the rent that should have been paid but were not, must now be paid.

6 In construing a contractual document the only immutable principle is that the court should extract such meaning from the words that the parties had chosen to reflect their intention at the time of the contract. It is wrong to give to the words a meaning that counsel thinks the words ought to mean, or even what the court thinks they ought to mean. Semantic interpretation is very often a very difficult exercise. What the words say and what the parties mean by the words they say may not be the same thing. A simple example will illustrate the point. If John upon seeing Henry eating cookies, exclaims in Henry's presence: "I'm hungry". The words are clear. But what did John mean? He could mean (a) he is hungry; (b) the sight of Henry eating makes him hungry; or (c) please, Henry, share your cookies with me. John could reasonably mean any one or all three of the above interpretations. Now, the more facts there are, the greater the chance that different bystanders may differ in their view as to what John meant. I refer to this illustration to emphasize the need to be faithful to fundamentals. One great fundamental in the application of the law is consistency because consistency is the alloy of predictability. In this regard, the courts ought to consistently adopt the approach that the meaning to be given to written words must first be that as appears from the text. The context becomes an aide in interpretation only if the words are vague or ambiguous, and only to the extent that a reasonable application of the context would easily bring out the meaning intended by both sides.

7 For the above reason the phrase "it all depends on the facts of the case" can so easily become the anthem of inconsistency. The phrase has such a magical ring to it. It seems that whenever this incantation is made the court is at liberty to do as it pleases - because 'there is no case like the present'. That is the temptation we must all resist. Can cl 1.3 of Schedule 5 give rise to the interpretation Mr Yeo says it does? I do not think so. There is nothing exceptional on the facts to warrant a departure from a plain reading of the lease. And a plain reading of the lease does not say that the rent-free periods are given *only* if the full five years lease is not interrupted. It is obvious that the parties contemplated a five-year lease, but the rent-free periods were not given on the condition that the defendants complete the full term. If so, there would be no necessity whatsoever for cl 7. Clause 7, as it may be recalled, is the termination clause. It clearly envisaged that either party may terminate before full term provided that they comply with the terms set out in that clause. In that event, if the termination was initiated by the defendants, then they have to pay half the rent payable during the rent-free periods. So, the prospect of not completing full term had been anticipated, and payment of rent during the rent-free period had been worked out on the formula expressed in cl 7.2. The Surrender Agreement was the unusual and unexpected event. If the plaintiffs had told the defendants directly during the negotiations of the Surrender Agreement that they had to pay up rent for six months the defendants would have said that in that case they would prefer to give six months notice and pay only three months rent as provided under cl 7.2. In truth, as Mr Yeo candidly conceded, the parties did not think about the payment of compensation sum in the course of the negotiations leading to the Surrender Agreement. The temptation to be resisted here, is any inclination to read the effect and purpose of cl 1.3 of Schedule 4 wider than the words

themselves allow. In any event, the purpose and reasons for cl 1.3 that Mr Yeo suggests can only be understood by tracing the history of the commercial conduct of the parties and the negotiations and internal memorandum – all of which Mr Yeo valiantly tried to introduce. I refused to admit such evidence in the interpretation of the words of a final written agreement. They are extraneous, irrelevant, and prohibited by s 93 of the Evidence Act Ch 97 which provides as follows:-

> '93. When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.'

8 The provision for payment of compensation must be expressly provided. In the case of the Lease, it was provided under cl 7. However, as it is apparent that cl 7 does not apply where the lease was terminated by mutual consent and not by the unilateral notice, the agreement by which the mutual consent was made, and that would be the Surrender Agreement, must either provide for the payment of compensation, or otherwise include terms that will deal with the rent-free periods. In the absence of any explicit agreement, no positive obligation can be inferred from something so straight forward as the recovery of rent during rent-free periods that had expired. That is why it is just as important to examine the Surrender Agreement as it is the Lease. We never get the full measure of the strength of the horse just by observing the strain on its sinews without seeing the load it pulls. Mr Yeo submitted that cl 3.1 of the Surrender Agreement preserved the right of compensation under the lease. I think that cl 3.1 was over-generously applied in such an interpretation. Only obligations and undertakings that remained unperformed are preserved. But there were no outstanding obligations by the defendants to the plaintiffs. The obligations to pay compensation sums do not arise because, as Mr Yeo conceded, this was not a case of termination under cl 7.1. The parties had envisaged all the possibilities of ending the lease, save one, and had provided for those eventualities, save that one; and that exception was the event of a mutual termination. The only reasonable inference must be that in that situation the parties will mutually negotiate the terms as to how the lease was to end. No vitality from the previous agreement can be transferred to the Surrender Agreement unless it was clearly and precisely provided for.

9 A Surrender Agreement may or may not release a party from any prior obligations that had already accrued. Much depends on what the terms of the Surrender Agreement say. If the agreement does not expressly forgive past infractions then as Bankes LJ held in *Richmond v Savill* [1926] 2 KB 530, 539: that when a lessee breaches terms of the lease, 'there were vested causes of action, and there is nothing on the legal operation of the surrender which takes away from the reversions any of those rested causes of action'. No such cause of action arose here because no breach of the lease had been identified other than the surrender itself; but that is not a breach.

10 Mr Yeo submitted that as an alternative claim, the plaintiffs are entitled to the rent due from the rent-free period on the basis that the defendant would otherwise be unjustly enriched. For the reasons that I have set out above, this unjust enrichment argument is untenable. When two parties mutually agree to terminate an agreement it must be assumed that both sides see some merit or advantage to do so. If they had to forgo some benefit or advantage that was due to them under the agreement that was to be rescinded it must be that they believe it would be for the greater good of themselves, otherwise they must make provisions to retain that benefit or advantage. That is the basic principle of accord and satisfaction. There was no question of the defendant taking an advantage by concealment of a material fact. The issue of repayment of rent during the rent-free period ought to be as obvious to one party as it would the other. If neither chose to address it the

court will not now interfere.

For the reasons above, the plaintiffs' claim was dismissed.