Panpac Education Pte Ltd *v* Applied Movers & Trading Pte Ltd [2014] SGHC 50

Case Number	: Suit No 448 of 2013 (Registrar's Appeal No 350 of 2013)
Decision Date	: 20 March 2014
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Roger Foo and Melissa Leong (Genesis Law Corporation) for the plaintiff; K R Manickavasagam (Manicka & Co) for the defendant.
Parties	: Panpac Education Pte Ltd — Applied Movers & Trading Pte Ltd

Landlord and Tenant – Rent and Service Charges – Obligation to pay for rental and for reimbursement works

20 March 2014 Grounds of Decision

Judith Prakash J:

Introduction

1 The plaintiff, Panpac Education Pte Ltd, was the chief tenant of certain premises leased from the Jurong Town Corporation ("JTC"). It sub-let a portion of the premises under successive sub-leases to Applied Movers & Trading Pte Ltd, the defendant. The last of these sub-leases was to expire on 15 January 2013.

2 Sometime in July 2012, the plaintiff told the defendant that there would be no further extension of the sub-lease as JTC wanted the premises back. Subsequently, however, the plaintiff agreed to a short extension of the sub-lease up to 15 April 2013. This was at the defendant's request and with the consent of JTC. In the event, the defendant moved out of the premises on 28 February 2013.

3 The plaintiff started this action in May 2013. It claimed that the defendant had failed to pay it a total of $324,340.05 due as rent and associated costs under the extended sub-lease. Against this sum, the plaintiff had set off the deposit of $100,000 paid by the defendant leaving an outstanding balance of $224,340.05. Additionally, it asserted that the defendant had failed to pay it the sum of $62,702 that it had expended in reinstating the premises. The plaintiff claimed the two sums of $224,340.05 and $100,000.

4 The defendant disputed both claims. As regards the rental, it alleged that rent was due only while it occupied the premises. As it had vacated the premises on 28 February 2013 it was not liable to pay rent for March 2013 and 1 April to 15 April 2013 which was the period during which reinstatement of the premises had taken place. It admitted having failed to pay $172,408.43 in rent and associated costs due up to 28 February 2013 and averred that once the deposit and another small sum the defendant had paid were taken into account, the amount owing was only $72,186.05. The defendant also alleged that it was not liable for the cost of the reinstatement works: the plaintiff had not proven that these costs had arisen from the defendant's occupation of the premises. The defendant put in a counter-claim for $97,500 being the amount it had to pay in removal costs when it vacated the premises early at the plaintiff's demand.

5 The plaintiff applied for summary judgement and also to strike out the defendant's counterclaim. Both applications were heard by the same Assistant Registrar (the "AR"). The AR decided that the defendant's counterclaim disclosed no reasonable cause of action and struck it out. As for the summary judgment application, she made two orders:

(a) In respect of the sum of $72,186.05 that the defendant admitted was due, judgement was entered for the plaintiff for the amount with interest as provided in the sub-lease and costs; and

(b) In respect of the balance amount of $214,856, the defendant was granted leave to defend the same on condition that it furnished the plaintiff security for the full amount in the form of a banker's guarantee within 14 days of the court's order, failing which judgement would be entered for the plaintiff for that amount, interest and costs.

6 Shortly thereafter, the defendant filed an appeal against the AR's decision in respect of the sum of $214,856. It wanted unconditional leave to defend this claim. I heard the defendant's appeal and had to consider the same issues that were argued before the AR: whether the defendant was liable to pay rent for the period after it vacated the premises and secondly whether it was liable to pay the reinstatement costs. After hearing the parties, I gave the defendant unconditional leave to defend the claim for reinstatement costs but upheld the AR's order of conditional leave for the balance of rent unpaid (this amounted to $152,154). The defendant has appealed against this part of my decision.

First Issue: Was the defendant liable to pay rental up to 15 April 2013?

7 To resist summary judgement, the defendant had to show a triable issue. It argued that there was such an issue because the plaintiff had not clearly indicated that it would charge rental during the re-instatement process. The contract between the parties and the correspondence did not provide for rental to be paid during that period. In this respect, the defendant referred to various documents. First, there was the sub-lease made on 7 October 2011 which covered the tenancy period from 15 January 2012 to 14 January 2013. The sub-lease did not contain any clause that stated that the defendant would have to vacate the premises before 14 January 2014 to allow for re-instatement of the same. Secondly, the parties had signed a letter agreement on 26 December 2012 in relation to the extension of the lease ("extension letter") and this too was silent on any obligation on the defendant's part to pay rent during the re-instatement period.

8 The defendant pointed out that the only obligation in the extension letter in relation to re-instatement was clause 6 which stated:

Reinstatement period

The tenant agrees to abide strictly to the official handover date to JTC. In this instance, the tenant may be required to vacate 1 month (depending on the need of contractor) before the expiry of this tenancy.

The defendant contended that clause 6 meant that even though the tenant had taken a three month extension of the tenancy, it could be asked to leave a month earlier depending on what the contractor needed. In that event, the defendant would not have to pay rent when it left. It submitted that this was the correct interpretation of the clause because no reasonable businessman would want to take a tenancy of three months if he could only stay in the premises for one and a half months and yet have to pay three months' rent. If the plaintiff had intended that the defendant pay rental during the re-instatement period, it should have stated so clearly in the extension letter.

9 The defendant also submitted that while negotiating for the return of the premises to JTC, the plaintiff never asked the defendant for rent during the re-instatement period. Further, no specific period for re-instatement works was provided and the plaintiff did not tell the defendant exactly how much time was taken in re-instating the premises.

10 The basic question to be decided was as to the proper interpretation of the defendant's obligations under the extended sub-lease. The interpretation put forward by the defendant had an attractive aspect but when the whole context was looked at, it appeared to me to be rather flimsy. The plaintiff relied on the contextual approach to contractual interpretation and submitted that the context in which the extension letter was issued showed clearly that the defendant was liable to pay rent right up to the end of the extended lease period (that is, up to 15 April 2013) notwithstanding that it physically left the premises before that date.

11 First, the sub-lease by clause 2(i) obliged the defendant to return the premises at the end of the tenancy in the same condition as they were in at the time that the tenant had moved in. This meant, the plaintiff said, that the defendant was obliged to re-instate the premises to their original condition before surrendering them at the end of the sub-lease. The defendant was well aware of this obligation since from July 2012 onwards since the plaintiff had been notifying the defendant that JTC required re-instatement.

12 Second, the background that the plaintiff relied on to interpret clause 6 was shown in the correspondence. On 1 October 2012, the plaintiff sent the defendant an email, in response to the defendant's request for a three month extension. It stated that the defendant's decision to terminate by 14 April 2013 had to be firm and that if that termination date was given, then the defendant "will need to move out by 14 March 2013 the latest leaving 1 month for re-instatement". The email went on to state that the effective rental from 14 January 2013 to 14 April 2013 was $94,800 per month plus monthly sub-letting fees. This email clearly informed the defendant that even with the extension, it would have to move out one month early and that the effective rent was to cover the whole period of the extension. On 8 October 2012, the defendant accepted the new rental rates inclusive of sub-letting fees.

13 Further, the parties had a meeting on 18 December 2012 and their discussion was reflected in an email that the plaintiff sent to the defendant the next day. At the meeting, the defendant was informed that JTC had approved the extension of the tenancy up to 15 April 2013 on the condition that the re-instatement of the premises was completed by that date and the official handover took place on that date. The defendant had agreed to absorb full rental, sub-letting fees and certain other expenses for the premises. There were other points in the email as well and the plaintiff asked the defendant to let it know if any important points had been omitted. The defendant did not respond to contradict, or add to, anything stated in the email.

14 The plaintiff submitted that clause 6 of the extension letter had to be interpreted in the light of the previous correspondence and the whole letter. The clause repeated the requirement to vacate early for re-instatement work but the tenancy was extended for three months so rental had to be paid for the full period.

15 The plaintiff also argued that the defendant's subsequent conduct showed that it understood what its obligations were. On 24 January 2013, the defendant's managing director, Mr Benjamin Netto, said in an email that the defendant was still considering various alternative warehousing options and would advise the plaintiff shortly on when it could vacate the premises. Mr Netto also asked whether the defendant was required to pay rental after handing over the premises for re-instatement. The plaintiff responded that the defendant would have to pay for the full rental during the re-instatement

period as agreed. In response, Mr Netto said that since JTC was asking for two and a half months to do re-instatement in, there would be a heavy burden on the defendant because it would have to pay rent for two locations. Mr Netto asked the plaintiff to assist in mitigating the cost. The plaintiff was thereafter able to reduce the re-instatement period to two months. It was only on 1 February 2013 that Mr Netto informed the plaintiff that the defendant would vacate the premises on 15 February 2013 and would not pay any rental thereafter. The plaintiff responded by reminding the defendant that the three month extension to 15 April 2013 was based on the defendant's agreement to pay the rental until the last day taking into account that the re-instatement period was included in the extended period. The defendant did not reply.

16 In all the circumstances, I considered the plaintiff's case was extremely strong. The proper interpretation of the extension letter appeared to be that the defendant was obliged to pay the full rental for the period from 15 January till 15 April 2013 even though the defendant would have to vacate the premises about a month or so before the termination date to allow for re-instatement. This was what the parties wanted to provide for. The extension letter clearly stated the extension period as being a three month period and that there would be a monthly rental of $94,800 plus GST and sub-letting fees during this period. The defendant also had to hand back the premises in their original condition. The defendant's alternative interpretation was based on more shaky ground. The defendant had recognised the possibility of paying rental for two locations during the re-instatement period and asked for the plaintiff's assistance. Further, in Mr Netto's affidavit of 27 August 2013, he said that it had been agreed that the defendant would pay rental for the extended three months as it would be *occupying* the premises. However, he was fully aware that the defendant would have to move out by 14 March 2013 at the latest because of the re-instatement work. If he knew that the defendant would have to move out, he surely could not have been completely truthful in saying that the defendant had agreed to pay for three months on the basis that it would be occupying the premises for the full three months.

17 I agreed with the AR that the defendant had to show commitment to its defence regarding the rental by providing security. It is well established that leave to defend on the condition that full amount is to be paid into court may be ordered if the defence is shadowy or where there is little or no substance in it or the case is almost one in which summary judgment should be ordered. In *Abdul Salam Asanaru Pillai (t/a South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [44], Sundaresh Menon JC (as he then was) observed that a condition is appropriate when, although it cannot be said that the claimed defence is so hopeless that, in truth, there is no defence, the overall impression is such that some demonstration of commitment on the part of the defendant to the claimed defence is called for. In my view, the present case met that test in regards to the issue of rent for the period from 1 March 2013 to 15 April 2013.

Second Issue: Did the defendant owe the plaintiff $62,702 for reinstatement works?

18 The plaintiff claimed $62,702 as costs for reinstatement works carried out on the premises. The plaintiff relied on the following to establish the defendant's liability for this amount:

(a) The penultimate paragraph of the plaintiff's 26 December 2012 letter to the defendant stating that "the other terms and conditions in the tenancy agreement made on 7 October 2012 shall remain valid, unless otherwise stated";

(b) The defendant had ignored its obligation under clause 2(i) of the Sub-lease to surrender the premises in "good and tenantable condition";

(c) The defendant was fully aware of its obligation to pay for the reinstatement works as:

(i) JTC had provided the plaintiff with a list of reinstatement works to be carried out on the premises and this included the defendant's reinstatement works;

(ii) The plaintiff then obtained quotations for the reinstatement works from four contractors;

(iii) Mr Netto had acknowledged the defendant's obligation to pay for the relevant reinstatement works in his 1 February 2013 email to the plaintiff;

(iv) In the plaintiff's 4 February 2013 email reply, it informed Mr Netto that the defendant would be kept updated on the reinstatement portions to be covered by the defendant. This was duly done on 14 February 2013.

19 The defendant disputed its obligation to pay $62,702 on the basis that the plaintiff had not shown that that was the amount spent to rectify the damage caused by the defendant. Hence, the amount had not been justified. I agreed with the defendant. In order to claim the sum of $62,702, the plaintiff not only had to show what work had cost that amount; it also had to show that the work was necessitated by the defendant's occupation of the premises. The plaintiff had leased the premises from JTC and had sub-leased only a portion of the same to the plaintiff. It had to show the condition of the sub-let premises at the time they were leased out and their condition at the time the defendant vacated the premises. It then had to show that the condition of the sub-let premises on sub-letting was the original condition at the time it took over the premises from JTC. Having done all that, it would have to correlate the re-instatement costs claimed with damage done by the defendant which was not fair wear and tear. The plaintiff's evidence before me did not meet these requirements. I therefore gave the defendant unconditional leave to defend this part of the claim.

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