Alvin Nicholas Nathan *v* Raffles Assets (Singapore) Pte Ltd [2015] SGHC 14

Case Number	: Originating Summons No 91 of 2012
Decision Date	: 20 January 2015
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Goh Aik Leng Mark, Lim Lian Fang Pearl and Aaron Nathan (Instructing Counsel) (MG Chambers LLC) for the plaintiff; Sim Bock Eng, Quek Kian Teck and Jasmine Chan (WongPartnership LLP) for the defendant.
Parties	: Alvin Nicholas Nathan — Raffles Assets (Singapore) Pte Ltd

DAMAGES – Assessment

LANDLORD AND TENANT – Agreement for leases

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 40 of 2015 was dismissed by the Court of Appeal on 1 February 2016. See [2016] SGCA 18.]

20 January 2015 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is claiming damages from the defendant for the damage and costs incurred by him when the defendant breached the tenancy agreement that the plaintiff had signed with the defendant's predecessor-in-title.

2 The plaintiff is a sole proprietor of several businesses although he deposed in his evidence that his main business lies in the agency distributorship for Aviva Ltd's investment and insurance products. He also runs a call service under the style and name of "Eureka Call Centre Systems (S) Pte Ltd". This business also operates a centre for training for persons with disabilities.

3 The premises in question is located at 51 Merchant Road, #02-06 to #02-09, Merchant Square ("the premises"). The plaintiff signed a lease agreement with the landlord for the premises on 9 November 2010 for a term commencing from 15 December 2010 to 14 December 2012. The lease gives the plaintiff an option to renew for a further two years with any increase in rental capped at 20%.

4 The plaintiff learned on 25 January 2011 that the landlord had assigned the lease to the defendant. On 4 October 2011 the defendant informed the plaintiff that the premises will be extensively renovated and work was scheduled from "1 March 2011 until end of 2012" [*sic*].

5 The plaintiff was told at a meeting with the defendant on 10 October 2011 that he could remain in the premises until December 2012 but not beyond and that there would be no renewal of the lease. The tenants of the premises were encouraged to vacate the premises on account of the noise and dirt of renovations. The defendant offered to waive rent and also to release the tenants of their obligation to reinstate their rented premises should they agree to vacate. The plaintiff declined this offer.

6 A second offer was made on 24 October 2011 and again the plaintiff declined the offer. On 10 November the plaintiff received a letter dated 8 November 2011 from the defendant in the following terms:

> We refer to your fax letter dated 25th October 2011 and confirm that our letter of 24th October 2011 served as a Notice of Termination of your lease at 51 Merchant Court, #02-06/9, Merchant Square, Singapore 058283 ('Premises') effective from 24th October 2011 to 29 February 2012. You have to vacate the premises, latest by 29th February 2012 ("Surrender Date").

In the same letter, the defendant offered to compensate the plaintiff by payment of "S$4166.67 per month for the unexpired terms". The total sum offered for compensation was $39,583.36.

7 The lease was for a fixed term, and therefore, unless there are express exceptions, the lease must run its course and cannot be terminated by the landlord. In this case, the defendant relies on cl 4(10) of the lease as the basis for terminating the lease. Clause 4(10) reads as follows –

> If at any time during the Term or any renewal thereof, the Landlord were to enter into an Option or Agreement for sale of or disposal of the Landlord's entire interest in or share of the building (together with the common area) with vacant possession to be given to the purchaser on completion of sale, the Landlord may terminate this Lease by giving the Tenant six (6) months prior written notice to terminate this Lease and this Lease will terminate upon the expiry of such notice and the Tenant shall (if still in occupation) vacate the Premises upon the expiry of such notice, but without prejudice to any right and remedy that either party may have against the other for any antecedent breach of this lease.
>
> The Landlord hereby agrees that upon notice being given pursuant to this sub-clause (10) and upon the Tenant vacating and surrendering the Premises to the Landlord ("Surrender Date") the Landlord shall compensate the Tenant a sum of S$4,166.67 per month subject to a maximum sum of $100,000.00 for the unexpired term. For avoidance of doubt, the said compensation will be computed from the Surrender Date of the Premises to 14 December 2012 at S$4,166.67 per month subject to a maximum sum of S$100,000.00. In addition to the compensation due to the Tenant, the Tenant shall also not be required to reinstate the Premises to the original condition in the event of any premature termination to this sub-clause (10).

8 The above term of the lease clearly and unequivocally gives the landlord a right to terminate by giving six months' notice and payment of compensation fixed at $4,166.67 a month for the unexpired term. It is a right that might be exercised by the defendant's predecessor-in-title and not the defendant, nor against this plaintiff. The right is given in cl 4(10) only to the landlord in the event he grants an option to sell or contracts to sell the premises. The landlord who signed the lease with the plaintiff sold the premises to the defendant without exercising this right. This right inures to the defendant and may be exercised by it should it sell the premises. It cannot be used to retrospectively terminate the plaintiff's lease with the previous landlord.

9 The plaintiff's solicitors thus wrote to the defendant to say that the defendant's notice of termination was a repudiatory breach of contract which breach the plaintiff accepts and holds the defendant accountable for the consequences.

10 I agree with counsel for the plaintiff that the defendant was in breach of the lease agreement and by accepting the breach, the plaintiff was entitled to seek new premises and hold the defendant liable for loss and damage caused. The question is what damages is the plaintiff entitled to in the

circumstances?

11 The plaintiff is claiming $375,913.46 as "wasted costs" being the expenses put into the renovation of the premises. He claims that this is reasonable since he had salvaged whatever he could. The premature termination cost the plaintiff his chance of recovering the renovation costs, which he had hoped to do from the profits of his business.

12 The plaintiff moved to new premises at 1 Magazine Road, #03-01 to #03-02, Central Mall ("interim premises") on 15 February 2012. He moved out on 30 May 2012 to #07-07 to #07-11, a few floors above ("current premises"). He is claiming the sum of $83,962.00 being the costs of relocation to the interim premises. He is also claiming the costs of the subsequent relocation to the current premises. He is also claiming the costs of having to rent 2,388 square feet more space in the current premises. He is further claiming damages for the loss of opportunity in recruiting new agents who would have earned him a higher profit. Finally, he is claiming loss of "basic and additional benefits" from his insurance distributorship business.

13 Ms Sim Bock Eng ("Ms Sim"), counsel for the defendant submitted that damage must be proved, and when proved, only such damages which are not too remote are recoverable. She submits that only $106,097.36 counts as wasted costs for the work done in the premises. This is based on the calculation and evidence of the defendant's expert witness, Mr Martin Anthony Riddett ("Mr Riddett"). He testified that the plaintiff had enjoyed the premises for 422 days and this has to be taken into account. Mr Riddett also testified that some of the items claimed were not in the premises – such as furniture and fittings that were not found in the floor plan. Further, some items were disposed of when they could have been salvaged – such as the LED spotlights.

14 Ms Sim thus submitted that there was no act of mitigation on the part of the plaintiff. She also criticised the evidence of Mr Elango Subramanian ("Mr Subramanian"), the plaintiff's expert witness, on the ground that he had included costs of items such as the biometric door access system which was re-used in the current premises. She says that Mr Subramanian had also wrongly included the fire-proof doors which were an unnecessary purchase by the plaintiff because the landlord had provided such doors.

15 Ms Sim also disputes the merit of claiming relocation costs since Aviva had paid for those costs. There is no evidence that the plaintiff has to repay Aviva. It also seems improbable that Aviva would pay for the relocation if it is not obliged to do so. The only explanation would be that the plaintiff had asked for financial assistance. In which event, there must be evidence on record. There is none. Counsel for the plaintiff in reply stated that Aviva will not pay for a second renovation. That is to say, that it will not pay for a second relocation.

16 Ms Sim submits that the plaintiff has not proved that it has suffered any loss of profits or opportunities and that the claims made in this respect are too remote.

17 I accept Ms Sim's submission on the claim with regard to wasted costs in that the figure is closer to the sum of $106,097.36 than the plaintiff's claim for $375,913.46. I will award a rounded figure of $150,000.00 to the plaintiff for wasted costs. This is rounded upwards to take into account some of the items that are a little exaggerated in value but nonetheless, likely to have been incurred by the plaintiff.

18 I am of the view that the plaintiff is entitled to some damages for the inconvenience of having to find and move to new premises. There is no precise way of measuring such damages except for the court to keep in mind the length and costs of the lease, as well as the evidence of the nature of the

business and the trouble in finding new premises. In this regard, I think that a sum of $20,000.00 is sufficient for the general inconvenience of loss and the trouble in finding new premises. The plaintiff had tried to mitigate his renovation costs but the evidence suggests that the claim of salvaging was a little exaggerated.

19 I also find that the plaintiff would be entitled to the difference between the rent of the current premises and the rent of the premises from the first payment of the rent for the current premises until the last rent that the plaintiff would have paid the defendant for the remainder of the lease, including the two-year extension at 20% increase in rent.

20 I award the plaintiff the sum of $83,962.00 being the costs of re-locating to the interim premises. I disallow the claim for the costs of the subsequent relocation to the current premises. It is not reasonable to expect Aviva to pay for two relocations. It cannot be reasonable to hold that the defendant should therefore pay for it. I am of the view that the plaintiff must know that if Aviva would not pay for two relocations, then he ought to take his time finding the premises that he will move to. He could have stayed beyond the deadline given by the defendant and if he could prove that his delay was reasonable, resist any claim for damages for over-staying. I accept that the new premises will not be identical to the old in all respects, but the advantages and disadvantages usually even themselves out. The plaintiff may have moved to larger premises but that may be because his business requirements justify it. The move in this respect is a boon to him. No businessman would move to larger premises if he thinks that his business does not justify it.

21 I am of the view that the remaining claims of the plaintiff are too remote and are thus dismissed. Subject to the above, there will be judgment for the plaintiff.

22 I will hear question of costs at a later date.

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