IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 90

Suit No 954 of 2012
(HC/Summon No 917 of 2016)

Between

Elbow Holdings Pte Ltd

…Plaintiff

And

Marina Bay Sands Pte Ltd

…Defendant

(Consolidated with Suit Nos 702 of 2013 and 553 of 2014)

JUDGMENT

[Civil Procedure] — [Injunctions]

Version No 1: 27 Oct 2020 (22:39 hrs)

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Elbow Holdings Pte Ltd
v
Marina Bay Sands Pte Ltd

[2016] SGHC 90

High Court — Suit No 954 of 2012 (HC/Summon No 917 of 2016)
Choo Han Teck J
5 May 2016

9 May 2016 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a restaurateur and signed a lease agreement with the defendant to run its restaurant, "South Coast Bar & Bistro", at two units at Marina Bay Sands Shoppes ("the premises"). The lease was for six years from 2 December 2010 and is due to expire on 2 December 2016.

2 In the main suit, the plaintiff is suing the defendant for alleged misrepresentation and breach of a collateral contract in not keeping to the promise to allow the plaintiff the right to use certain outdoor spaces at the premises under the lease. The plaintiff's claim is that by reason of the smaller premises its restaurant was not as profitable as it should be. The defendant then filed a counterclaim for arrears in rent and subsequently also commenced two suits (Suits Nos 702 of 2013 and 553 of 2014) against the plaintiff for further arrears allegedly due and owing to it. All three actions were

subsequently consolidated. The suit is scheduled for trial before me between 25 August and 9 September 2016.

3 The current application before me is an application by the plaintiff for relief against forfeiture. This application was filed on 29 February 2016, after the defendant re-entered and re-possessed the premises on 26 February 2016 on account of the plaintiff's non-payment of rent. The plaintiff sought an injunction for the defendant to restore the plaintiff to possession of the premises and thereafter to restrain the defendant from re-entering, repossessing or otherwise interfering with the plaintiff's use and occupation of the premises.

4 Lee Seiu Kin J heard the application on an urgent basis on 1 March 2016 and granted an injunction on the following three conditions:

(a) The plaintiff is to pay the defendant the February and March 2016 rent of $36,561.90 per month by 5pm on 8 March 2016;

(b) Thereafter, the plaintiff is to pay the defendant monthly rent of $36,561.90 by 5pm on the 1st day of each month in advance, or the next working day if it falls on a weekend or public holiday; and

(c) The plaintiff is to provide the defendant with a statement and calculation of the Turnover Rent payable for 2015 in accordance with clause 1.2 of Schedule 6 of the Lease by 31 March 2016. If any Turnover Rent is payable as a result of this computation, the plaintiff is to pay the same by 5pm on 1st April 2016.

Lee J's order further provides that in the event that the plaintiff breaches any of the above conditions, the interim injunction would be discharged without

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further order of court and the defendant may then re-enter and take possession of the premises at any time.

5 On 4 April 2016, the plaintiff filed a second application (Summon No 1567 of 2016) for an extension of the injunction. It did so because the parties disputed the claim by the plaintiff that it had complied with the third of Lee J's three conditions, and the defendant had accordingly threatened to re-enter and re-possess the premises. At the second hearing before Lee J on 6 April 2016, the learned judge ordered that the injunction was to continue but with additional conditions. Apart from having to pay to the defendant monthly rent of $36,561.90 by 5pm on the 1st day of each month, the plaintiff was also to pay to the defendant the balance of turnover rent amounting to $41,960.17 by 12 noon on 8 April 2016. Lee J further ordered costs of $10,000 against the plaintiff. It seems to me that the order for costs was made because it was the plaintiff's fault in miscalculating the amount of turnover rent due to the defendant. The order also stated that the injunction would be discharged without further order upon the plaintiff's breach of any of the conditions.

6 Injunctions of this nature should not be granted lightly and, when granted, should not be lightly disturbed, otherwise, the result is that landlord and tenant take turns to move in and out of the premises in dispute while waiting for trial. In this case, the options are clear. The court could have held that since the trial is only a few months away and the lease itself has not long to run, the status quo should remain. That is to say, the landlord should not be allowed to re-enter until trial. On the other hand, since the landlord in this case had already entered, the court might treat that as the status quo and refuse the injunction for the same reason. In either case, it is a matter that can be compensated by damages.

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7 Having already obtained the injunction a second time, the matter ought to rest. Strangely, the parties erroneously treated Lee J's injunction as an interim not to the trial but to a hearing of Summon No 917 of 2016 before me. Further, when I asked counsel during the hearing why the application was not heard before Lee J as per the previous occasions, counsel for the plaintiff informed me that Lee J had directed that Summon No 917 of 2016 be heard before me when he granted the injunction on the first occasion on 1 March 2016. That is so. However, the records reveal that during the subsequent hearing on 6 April 2016 when Lee J ordered a continuation of the injunction, he expressly directed the parties that all further applications under that summon were to be fixed before him unless they were urgent and he was not available. Naturally, the judge who had heard parties' previous arguments and who had made an order after considering those arguments is in the best position to hear further applications pertaining to that order that he had made.

8 Before me, counsel for the defendant contended that the plaintiff failed to comply with the condition stated in Lee J's order for it to pay rent by the first day of each month. No evidence has been tendered to show that the plaintiff did not make timely payments of monthly rent due, but there is sufficient evidence to show that the plaintiff has been having some difficulty in keeping up with its payment obligations under the lease generally. For instance, the plaintiff has been late in making payments to the defendant for utilities charges on several occasions. Furthermore, court-directed conditions must be complied with but the plaintiff has a record of failure to comply with multiple interim payment orders and cost orders and had in fact sold items seized by the Sheriff pursuant to a Writ of Seizure and Sale. Lee J's orders stated clearly that the injunction previously granted will be discharged without further order should the plaintiff breach any of the conditions stated therein.

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When granting the injunction on the second occasion, Lee J held that that was the last chance that he was giving to the plaintiff to make good its obligations. Having heard counsel I am of the view that the plaintiff has not been keeping up with its full payment obligations to the defendant under the lease, and that this problem is likely to persist if the injunction continues.

9 The plaintiff has a major claim for damages and so the effect of the discharge of the injunction means that the plaintiff's lease will be determined about eight months prematurely. On balance, I am of the view that the plaintiff can and will be compensated should the main suit be resolved in its favour, because the defendant appears to be more financially stable.

10 I therefore dismiss the present application by the plaintiff. The interim injunction pursuant to court orders ORC 1375/2016 and ORC 2297/2016 is hereby discharged. I will hear the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge

Tan Hui Tsing and Choo Ching Yeow Collin (Gurbani & Co LLC) for Plaintiff
Lin Shumin and Rajaram Vikram Raja (Drew & Napier LLC) for Defendant.

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