**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2025] SGHC 83**

Originating Application No 1305 of 2024

Between

(1) Sim Khong (Private) Limited

… *Applicant*

And

(1) Lion Peak Pte Ltd

… *Respondent*

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# GROUNDS OF DECISION

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[Landlord and Tenant — Termination of leases — Forfeiture]

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# Sim Khong (Pte) Ltd
# v
# Lion Peak Pte Ltd

**[2025] SGHC 83**

General Division of the High Court — Originating Application No 1305 of 2024
Chua Lee Ming J
28 March 2025

30 April 2025

**Chua Lee Ming J:**

## Introduction

1 The applicant, Sim Khong (Pte) Ltd, is the owner of 195 Serangoon Road ("the Property"). By a lease agreement dated 29 June 2022 ("the Tenancy Agreement"),[1] the applicant leased the Property to the respondent, Lion Peak Pte Ltd.

2 In the present proceedings ("OA 1305"), the applicant sought vacant possession of the Property to be delivered by the respondent immediately. It relied on the following grounds:

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[1] Applicant's Bundle of Documents ("AB") at pp 30–70.

(a) The respondent had repudiated the Tenancy Agreement and the applicant had accepted the repudiation.

(b) The applicant was entitled to exercise its right of re-entry under the Tenancy Agreement because the respondent (i) was insolvent; and (ii) breached the Tenancy Agreement by failing to pay rent, pay the utilities charges, and maintain the Property.

3 On 28 March 2025, I allowed the application save that I gave the respondent two weeks to deliver vacant possession of the Property.

4 On 10 April 2025, the respondent filed AD/CA 19/2025 appealing against the whole of my decision.

## Factual and procedural background

### *The Tenancy Agreement*

5 The Property was leased to the respondent for use as a hotel and for retail and/or food and beverage purposes. The lease for the Property was to expire on 9 December 2027.

6 The relevant obligations in the Tenancy Agreement were as follows:

(a) Clause 3.1.1 required the respondent to pay the stated rent. Clause 3.1.3 provided that the rent was payable "on the first day of each month (unless otherwise agreed between the Parties)".[2]

[2] AB 34–35.

(b) Clause 3.7 stated that the respondent agreed to pay the utilities charges in respect of the utilities supplied to the Property.[3]

(c) Clause 3.11.1 stated that the respondent was to keep the Property clean and in a good and tenantable repair and condition. Clause 3.11.2 stated that the respondent was responsible for any repairs or maintenance of the Property, including the lifts therein.[4]

7 Clause 6.1 provided for the applicant's right of re-entry as follows:[5]

> 6.1 **Re-entry**
>
> 6.1.1 The [respondent] will be in default under this Lease if, during the Term:
>
> (a) the [respondent] fails to pay the Rent or any other sum payable under this lease within seven days after the due date (whether or not formally demanded); or
>
> (b) the [respondent] fails to comply with other obligations under this Lease; or
>
> …
>
> (d) an event of insolvency occur(s) in relation to the [respondent]. The phrase "an event of insolvency" includes:
>
> (i) the inability of the [respondent] to pay its debts as and when they fall due;
>
> …
>
> 6.1.2 In any of the above events, the [applicant] may re-enter and take possession of the [Property] (or any part of it) at any

3 AB 37.

4 AB 40.

5 AB 55–56.

> time (even if any previous right of re-entry has been waived) and immediately on such re-entry, this Lease will end.
>
> …
>
> [emphasis in original omitted]

8 Clause 6.10.1 provided that waivers were only effective if written:[6]

> 6.10.1 The [applicant's] consent or waiver to any default by the [respondent] of its obligations in this Lease is only effective if it is in writing. Mere knowledge or consent by conduct (expressed or implied) of the [applicant] of such default by the [respondent] will not be implied or treated as waiver.

### *Unpaid rent*

9 The monthly rental for the period from June to December 2024 was $137,340, which was never paid in full during the same period. Despite the rent for each month being due at the start of that month, even by the end of every month, there was a balance due from the respondent.[7] The respondent agreed that there were delays in the payments but claimed that it ensured that "the rental arrears [were] kept to a minimum".[8]

10 On 24 January 2025, the applicant served a statutory demand on the respondent for the rental arrears of $209,680.[9] These arrears remained unpaid on the date of the hearing, 28 March 2025.[10]

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6 AB 61.

7 AB 72–73.

8 AB 133.

9 AB 226–227.

10 Applicant's Written Submissions ("AWS"), at para 17.

***Unpaid utilities charges***

11 By the respondent's own admission, by January 2025, the respondent had outstanding arrears in utility payments owed to the utilities provider, Singapore Power Ltd ("SP"). The respondent claimed that it entered into a payment arrangement to pay off the outstanding utility arrears by monthly instalments.[11]

12 Despite the respondent's non-payment, the utilities supply was never disrupted.[12]

***Unmaintained lifts***

13 On 31 October 2024, the lift maintenance service provider, OTIS Elevator Co (S) Pte Ltd ("OTIS") informed the applicant that OTIS had "suspended [its] services to [the respondent] due to long payment default".[13] The respondent confirmed that there was an outstanding payment of $20,805. It claimed that it "had been paying the said company its services charges on an instalment basis".[14]

14 The respondent claimed that there were no instances of elevator stoppages, and that it had alternate service plans to ensure the continued maintenance of the elevators.[15]

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11 AB 134–135, 199.

12 AB 134.

13 AB 75.

14 AB 199.

15 AB 135.

***Procedural history***

15 When OA 1305 was first taken out by the applicant, the supporting affidavit relied on not just the respondent's insolvency and non-payment of the payables above, but also the additional ground of misuse of the Property. In particular, the applicant alleged that the respondent had not used the Property as agreed under cl 3.16, *ie*, as a hotel.

16 The respondent did not dispute that it failed to pay rent, utilities charges, and lift maintenance service charges. Yet, it filed HC/SUM 358/2025 ("SUM 358") to seek a conversion of OA 1305 into an Originating Claim. The grounds of SUM 358 were "material factual discrepancies … including the disputes regarding rental arrears, the use of the premises, maintenance issues, and alleged unauthorized works".

17 On 24 February 2025, the Assistant Registrar ("AR") hearing SUM 358 dismissed it. During the hearing, the applicant stated that it was no longer relying on misuse of the Property. The AR thus only had to determine whether there was a material dispute of fact relevant to the grounds the applicant was relying on. In dismissing SUM 358, the AR made the following key findings:

(a) the respondent conceded that it failed to make payments in respect of rent, lift maintenance services, and utilities, when such payments became due and payable;

(b) the respondent's case that those payments were made afterwards was based on vague and bare assertions that did not raise any material dispute of fact; and

(c) even if there was a dispute over a potential waiver by the applicant of the respondent's obligations, it could be determined on the basis of affidavit evidence in light of cl 6.10.

**The Tenancy Agreement was not repudiated**

18 The applicant argued that it was entitled to *immediate* vacant possession because the respondent had repudiated the Tenancy Agreement, and such repudiation was accepted by the applicant.[16] While the contractual concepts of repudiation and termination apply to leases, a party repudiates a contract when it evinces an intention that it is unable or unwilling to perform its obligations: *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 at [134]. The applicant argued, relying on *Saha Ram Krishna and others v Tan Tai Joum (acting in his capacity as the personal representative of the estate of Tan Hee Liang, deceased)* [2024] SGHC 9, that the respondent repudiated the Tenancy Agreement when it deprived the applicant of substantially the whole benefit of the contract. I disagreed.

19 In the present case, the respondent did its best to fulfil its obligations but failed to do so timely. The statement of accounts showed that the respondent made regular, albeit insufficient, payments for rent. I did not think that the respondent had by its conduct repudiated the Tenancy Agreement.

20 The applicant also argued that cl 6.1.1 had designated, among others, cll 3.7, 3.11.1 and 3.11.2 as conditions of the Tenancy Agreement.[17] The respondent's breaches of those clauses would then have entitled the applicant to terminate the contract. This was Situation 3(a) as described in *RDC Concrete*

16 AWS at para 45.

17 AWS at para 60.

*Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 at [97]–[98]. I disagreed with this submission as well:

(a) First, if cl 6.1.1 had the designating effect that the applicant argued it did, then cll 6.1.1(a) and (b) would have designated every single obligation of the respondent as conditions of the contract. The parties could not have intended that outcome.

(b) Second, cl 6.1.1 had to be read with cl 6.1.2, the express right of re-entry which accrues upon "any of the above events" listed in cl 6.1.1. I found that cl 6.1.1 was only meant to specify the events upon which cl 6.1.2 could be exercised, and not to define other terms as conditions of the Tenancy Agreement.

**The applicant was entitled to forfeiture under cl 6.1.2**

21 The applicant argued that, if the Tenancy Agreement was not terminated, it would be entitled to exercise its right of re-entry under cl 6.1.2. Such a contractual right would be limited by ss 18 or 18A of the Conveyancing and Law of Property Act (2020 Rev Ed) ("CLPA"). I found that the applicant was entitled to exercise its right of re-entry.

***The respondent was in default under cl 6.1.1***

22 First, the respondent was in default under cl 6.1.1(a) for failing to pay the monthly rent within seven days after the due date. Clause 3.1.3 stated that the due date was the first day of each month. The monthly rent between June and December 2024 was never paid in full.

23 At the hearing, the respondent accepted that its failure to pay rent timely and in full amounted to a breach. It only argued that this was not a material

breach. However, the materiality of a breach was irrelevant under the express right of re-entry provided under the Tenancy Agreement. The events of default were defined strictly under cl 6.1.1, with no reference to the materiality of any default.

24 Second, the respondent was in default under cl 6.1.1(b) on two independent bases: the failure to pay utilities charges, and the failure to maintain the lifts.

(a) In relation to the utilities charges, it was not disputed that under cl 3.7 of the Tenancy Agreement, the respondent was obliged to pay the same. The respondent would not be in default if it entered into an agreement with SP to settle the outstanding charges, or for more time to make those payments. However, the respondent could not produce any evidence that such an agreement was reached and could only rely on a bare assertion to that effect. I was not convinced by the respondent. The mere fact that SP had not taken steps to recover payment from the respondent or cut off power supply to the Property did not mean that SP had *agreed* not to enforce its rights or that the respondent was not in default under cl 6.1.1(b). Since the respondent admitted that it had outstanding utilities charges, I found that it was in default under cl 6.1.1(b).

(b) In relation to the maintenance of the lifts, cl 3.11.1 provided that the respondent had to keep the Property in a good and tenantable repair and condition. I agreed with the applicant that the lifts were part of the Property; the list of examples in cl 3.11.1 was non-exhaustive and indeed cl 3.11.2 included "the lift(s)" as part of the Property which had to be maintained. In this regard, the applicant's evidence clearly showed that

> OTIS had suspended its monthly maintenance services to the respondent.[18] The respondent would be in default if the lifts were not being maintained; there was no need for a failure of or disruption to the functioning of the elevators. I was unconvinced by the respondent's *bare* assertion that it had an alternative service provider to maintain the lifts.

25 Third, the respondent was in default under cl 6.1.1(d)(i) for being unable to pay its debts as and when they fell due, *ie*, an event of insolvency had occurred. It was evident that the respondent had outstanding payments for rent, utilities charges, and maintenance service charges due. Indeed, the statutory demand issued by the applicant for the outstanding rental arrears remained unsatisfied.

***The applicant satisfied the conditions under the CLPA***

26 Any one of the preceding defaults entitled the applicant to exercise its right of re-entry under cl 6.1.2, subject however to compliance with the CLPA.

27 For the default under cl 6.1.1(a), *ie*, failure to pay rent, the applicant's right of re-entry was subject to s 18A CLPA. Pursuant to s 18A(3) CLPA, the court order must provide for at least four weeks between the date of the order and the date of delivery of possession, during which the lessee may avoid delivering possession by paying into court the rental arrears and costs of the action.

28 For defaults under cl 6.1.1(b), *ie*, failure to comply with obligations (other than payment of rent), and under cl 6.1.1(d)(i), *ie*, event of insolvency, the applicant's right of re-entry was subject to s 18 CLPA. Section 18(1) CLPA

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[18] AB 75, 81 and 83.

requires the lessor to serve on the lessee a notice specifying the particular breach complained of and requiring the lessee to remedy the breach. Only where the lessee fails to remedy the breach within a reasonable time where it is capable of remedy, and make reasonable compensation, is the lessor allowed to enforce a right of re-entry for the relevant breach. Unlike s 18A, s 18 CLPA does not provide for any minimum period between the date of the court order and the date of delivery of possession although the court retains discretion to grant the order on terms it thinks fit.

29 At the hearing, the applicant took the position that where an action for enforcement of a right of re-entry was allowed on multiple grounds, including non-payment of rent, the court was not bound to provide the respondent the four weeks under s 18A(3) CLPA. I agreed. The reliefs sought by the applicant were alternative reliefs. A lessor faced with a lessee who had committed *multiple* breaches (including failure to pay rent) ought not to be put in a worse position than a lessor dealing with a lessee who had committed a *single* breach that was not the failure to pay rent.

30 This was supported by ss 18A(2) and 18A(6) CLPA. Section 18A(2) CLPA provides for the action to cease if the lessee, within the time prescribed by rules of court for acknowledging service of the writ, pays into court all the rental arrears and costs of the action. Section 18A(6) CLPA in turn provides that subsection (2) shall not apply where the lessor is proceeding in the same action to enforce a right of re-entry on any other ground as well as for non-payment of rent. It is clear that the additional protections afforded to a lessee in s 18A CLPA are not meant to disadvantage a lessor proceeding on multiple grounds, one of which is the failure to pay rent.

31 In my view, the applicant had complied with s 18 CLPA in respect of the defaults under cl 6.1.1(b), *ie*, the non-payment of utilities charges and non-maintenance of the lifts. The applicant (through its solicitors) sent letters to the respondent dated 9 December 2024 ("the 9 December Letter") and 11 December 2024 ("the 11 December Letter") respectively.

32 The 9 December Letter stated that the respondent was in breach of, among other obligations, cll 3.7 and 3.11.1.[19] It also specified that this was due to the failure of the respondent to pay "all utility charges", and OTIS's suspension of maintenance services for non-payment respectively. The 11 December Letter stated that the respondent could "rectif[y] the breaches" by making all outstanding payments to SP and OTIS.[20] By the date of the hearing, more than three months had passed and there was still no evidence that the respondent had remedied the breaches.

33 Therefore, the applicant was entitled to an order for possession of the Property to be delivered to it on these two grounds alone.

34 In relation to the default under cl 6.1.1(d)(i), *ie*, the respondent's inability to pay its debts as and when they fell due, the applicant had not served a notice on the respondent requiring it to remedy the breach as required under s 18(1) CLPA. The applicant argued that it had served a statutory demand on the respondent. However, this was not compliance with s 18(1) CLPA. The applicant could not point to any authority in support of its argument that the service of the statutory demand was sufficient to comply with s 18(1) CLPA. In

19 AB 122.

20 AB 125.

my view, the applicant could not exercise the right of re-entry on this default alone.

**Conclusion**

35 As mentioned above, under s 18 CLPA, there is no minimum period between the date of court order and date for possession to be delivered, but the court may in its discretion impose terms which it thinks fit. In my view, as the Property was being used as a hotel by the respondent, delivery of possession forthwith was impractical. The respondent sought four weeks to deliver vacant possession as counsel claimed that some hotel residents were staying on a monthly basis. There was no evidence of this. I ordered the respondent to deliver vacant possession of the Property within two weeks.

36 The applicant also sought an order that it be at liberty to remove and dispose of furniture and/or chattels remaining on the Property on the date it takes possession of the Property. However, the applicant was already entitled to do so pursuant to cl 3.23.3 of the Tenancy Agreement.[21] I made no order in this regard.

37 Under cl 3.21 of the Tenancy Agreement, the applicant was entitled to costs of the application on an indemnity basis. I ordered the respondent to pay

[21] ABD 52.

costs of the application on an indemnity basis fixed at $15,000 (inclusive of disbursements).

Chua Lee Ming
Judge of the High Court

Tan Sheng An Jonathan, Farahna Alam and Lam Hugo (Withers KhattarWong LLP) for the applicant;
Joethy Ramalingam (Joethy & Co) (instructed) and Dube Vinod Kumar (Whitefield Law Corporation) for the respondent.