

Ong Beng Chong v Goh Kim Thong
[2010] SGHC 195

Case Number : Originating Summons No 140 of 2010
Decision Date : 07 July 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Tan Bar Tien (B T Tan & Partners) for the plaintiff; The defendant in person.
Parties : Ong Beng Chong — Goh Kim Thong

Landlord and Tenant

7 July 2010

Chan Seng Onn J:

Background facts

1 This was a dispute concerning the recovery of a house without a land title by the landowner.

2 Sometime in 1959, Ng Chwee Kim was permitted to erect a single storey terrace house known as No 24 Meng Suan Road Singapore 779225 (the "house") on part of a piece of land of 1957.1 sq m with a 999 years leasehold tenure known as Lot 550P of Mukim 13 (the "land"). The plaintiff, Ong Beng Chong, is presently the registered proprietor of the land. The house is one of the units in a row of 9 terrace houses (Nos 20 to 28 Meng Suan Road Singapore) built on the land.

3 By way of a deed of assignment dated 16 March 1983, the defendant, Goh Kim Thong, and his wife Lee Kui Want (assignees) bought the 24 year old house (without the land) for a mere \$10,000 from the then ground tenants of the land, Koh Kar Gat and Lee Yong Pow (assignors). The assignment itself stated that the house had been erected on the land owned by the plaintiff (and some predecessors in title of the plaintiff). The defendant continued with the payment of ground rent to the plaintiff as the landlord. The defendant recognised that the plaintiff is the owner of the land on which the defendant's house sits.

4 The defendant argued that he had not been in arrears in paying the ground rent (and any arrears was in fact due to the plaintiff's refusal to accept his payment) and that he had not breached the agreement dated 25 July 1959 whereby (a) Lian Aik Building & Company was authorised by Ng Chwee Kim to construct the house on the land at the agreed price of \$6,500; and (b) it was agreed that the "land rental of seven dollars per month is to be directly collected by the landlord from the owner of the house". Based on this agreement, the defendant contended that so long as he paid the ground rent of \$7 per month, he was entitled to squat on the land until the 999 years lease runs out in the year 2883.

Notice to Quit

5 On 30 October 2009, the plaintiff served a Notice to Quit on the defendant, giving him a month's notice. The plaintiff regarded the defendant as a month to month tenant paying a monthly ground rent to him. On 30 November 2009, the plaintiff determined the defendant's ground tenancy

and required the defendant to deliver up vacant possession of the house. The defendant refused the offer of compensation of \$225,000 from the plaintiff and demanded instead \$1.8 million to \$2 million dollars before he would vacate the house. As the plaintiff considered the sum demanded to be unreasonable, the plaintiff took up this originating summons requiring the defendant to deliver up vacant possession and pay the outstanding monthly ground rent.

The legal position

6 The legal position with respect to recovery of possession in such cases is clear. In *Khew Ah Bah v Hong Ah Mye* [1971-1973] SLR(R) 107, the defendant purchased an attap house in 1934, which was built with the permission of the owner of the land. The defendant had ever since been paying \$3 per month as ground rent to the landowner. In 1963, the landowner sold the property to the plaintiff who acquired it subject to the existing rights of the defendant. In 1968, the plaintiff landowner served a notice to quit on the defendant, contending *inter alia* that the tenancy at the rental of \$3 per month had been determined and that he was not precluded from recovering possession of the premises. Choor Singh J allowed the landowner's claim holding, *inter alia*, that the defendant had certain rights in equity which the landowner must satisfy before he could recover possession. He held that it was plain from the authorities that if the owner of land allowed another to expend money on the land under an expectation created or encouraged by the landowner that he would be able to remain there, that raised an equity in the licensee such as to enable him to stay there. The case of a tenant paying ground rent for the use of the land on which he has been allowed to erect a dwelling house is even stronger. He has a tenancy coupled with an equity. In such a case the landlord cannot recover possession of his land by merely terminating the tenancy; he must also satisfy the equity. The fundamental question in the case was how this equity was to be satisfied. Choor Singh J came to the conclusion that the person who built the house must have been led to believe that he would be allowed to remain on the land so long as he continued paying the ground rent of \$3 per month for otherwise he could not have built his house on land which did not belong to him. For 34 years from 1934 to 1968, none of the defendant's successive landlords took any step to determine the tenancy. All successive owners of the land including the plaintiff purchased it with notice of the defendant's rights in respect of the land and they continued to receive from him \$3 per month as ground rent. After much consideration, Choor Singh J concluded that the plaintiff should be allowed to recover possession of the premises on condition that he made *reasonable compensation* to the defendant for what was, in the words of Taylor J in *Kwek Kim Hock v Ong Boon Siong* [1954] 1 MLJ 253 "tantamount to expropriation".

7 The Court of Appeal in *Lee Suat Hong v Teo Lye* [1987] SLR(R) 70 had occasion to deal with a similar case. The defendant/respondent claimed to be entitled to continued possession of the premises on the ground that the plaintiff/appellant was estopped from denying the defendant's right to remain in occupation of the premises known as No 38A, Lorong Puntong, Singapore for as long as the defendant and her family deemed fit. The Court of Appeal set out its views at [13]-[23]:

13 In our view, in cases such as this where the defendant raises equitable estoppel to restrict the plaintiff from exercising his legal rights as landowner, the proper approach is to inquire first, whether any equitable estoppel exists, and if so, the extent of the equity established by the estoppel, before next considering how best that equity may be satisfied.

14 Whether there is an equity and its extent will, in the normal case, depend simply on the initial conduct said to give rise to the equity, although the court may have to decide how having regard to supervening circumstances, the equity can best be satisfied. If the equity so requires, the court may declare the defendant to be entitled to possession until his outlay is repaid, or even for so long as he wishes.

15 With regard to the creation of the estoppel, the general principle is that an estoppel arises where one party (A) makes a representation or promise to another party (B) intending (B) to act in reliance on the representation or promise, and (B) does so act to his detriment. (A) will then be estopped from acting inconsistently with his representation or promise.

16 In this particular case, the uncontrovertible facts show that:

- (a) prior to moving to the present premises (38A), the defendant and her family were staying at Lot 234 which belonged to the defendant's elder sister, one Soh Thow Neo;
- (b) the house at 38A was built by the defendant's late husband with the permission of the then owner of the land; and
- (c) the defendant and her family had been residing at 38A from 1956 or thereabouts.

17 However, the crucial fact in dispute was the nature of the representation or promise made to the defendant and her family which encouraged or induced them to move to 38A and expend money in building a house on land which did not belong to them and thereafter to stay on the premises.

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20 We would therefore restore the trial judge's finding that no expectation that the defendant be permitted to stay at 38A permanently had been created. This does not, however, mean that the plaintiff should be entitled to an order for possession without more. At the very least, and this the plaintiff does not dispute, the defendant having expended money in building her house on the premises with the then owner's consent, there is an equitable estoppel or an estoppel by acquiescence operating in favour of the defendant, thereby creating in her favour an equity which has to be satisfied before the plaintiff can recover possession.

21 On the basis of the trial judge's finding, this equity obviously cannot extend to protecting the defendant's occupation of 38A permanently. Neither would it therefore require that the defendant should be compensated with the costs of finding alternative accommodation in order that the equity may be satisfied.

22 On the evidence, the extent of the defendant's equity was merely to protect her from eviction without being compensated for the money expended in erecting the house. The defendant's equity can therefore be satisfied if she were so compensated.

23 As it was common ground that the replacement cost of the house has been valued at \$24,207, we therefore restored the trial judge's order that the plaintiff be entitled to possession of the premises upon payment of \$24,207 to the defendant. We further ordered that the defendant vacate the premises by 31 May 1987.

8 On the facts of this case, apart from the fact that the original owner of the house, Ng Chwee Kim, was permitted to erect the house on part of the land, I found no evidence of representations of any kind being made by the plaintiff or his predecessors in title to the previous owners of the house or the defendant that the owner of the house would be entitled to stay permanently on the premises. As such, no expectation had been created that the defendant was permitted to stay permanently at the premises. Accordingly, the defendant had to vacate the house and surrender the premises. I did not allow him to continue to pay the ground rent and stay till the expiry of the 999 years lease.

9 However, as the original owner of the house was permitted by the then landowner to erect a house on part of the land which led the original house owner to expend money in building the house on the land, the authorities are clear that an equity in favour of the house owner (and his successors in title) has been created which must be satisfied before the landowner (or his successors in title) can recover possession. As this case is similar to the facts in *Lee Suat Hong v Teo Lye*, I was of the view that the equity would be amply satisfied by the plaintiff paying reasonable compensation to the defendant for the replacement cost of the house adjusted for depreciation to take account of the present age and condition of the house. I did not consider it to be reasonable that the compensation be based on the cost of building a new house of a similar size without allowing for any depreciation.

First Hearing

10 During the first hearing on 23 March 2010, I had stood down the matter for the defendant to consider the compensation offer by the plaintiff and to reach an amicable settlement if possible. When this did not materialise, I informed the defendant that I might have to order a valuation of the house to assist me in objectively assessing what would be a reasonable amount of compensation but there was a risk that the valuation by professional valuers might well fall below the plaintiff's offer of \$225,000. The defendant said he wanted the valuation done. It was a gamble that the defendant took.

11 Accordingly, I made the following orders:

- "1. The defendant shall deliver up vacant possession of No 24 Meng Suan Road Singapore 779225 ("the said House") to the plaintiff in exchange for payment of reasonable compensation to be determined by the Court.
2. Each party shall engage its own professional valuers to produce a valuation report on the replacement cost of constructing a house based on the same materials as with the said House with depreciation accounted for the age of the said House.
3. The defendant shall grant access to the professional valuers appointed by the plaintiff and the defendant to carry out the valuation by 3.4.2010 and the aforesaid valuation reports to be submitted to the Court by 17.4.2010.
4. Further hearing of the case shall be fixed not earlier than 17.4.2010."

Second Hearing

12 The second hearing was fixed on 17 May 2010 after the parties had obtained the valuations as ordered.

13 The plaintiff engaged Jones Lang LaSalle. Using the Depreciated Replacement Cost Method and assuming a building lifespan of 65 years, Jones Lang LaSalle valued the house at \$67,000 as at 12 April 2010 with vacant possession free from all encumbrances but excluding the value of the land.

14 The defendant obtained a valuation from Knight Frank which valued the undepreciated building value to be \$335,000 as at 14 April 2010. The building was completed in 1959 and was thus 51 years old. Adopting a building lifespan of 65 years (given that periodic renovation and repair works had been carried out), Knight Frank used a depreciation factor of 78% (*i.e.* 51/65) and estimated the depreciated building value to be \$74,000 based on the Depreciated Replacement Cost Method.

15 I noted that the two professional valuers independently selected the same valuation method and the same lifespan to arrive at their valuations.

16 With both valuations being far below the compensation offer from the plaintiff, I gave the defendant a second opportunity to reconsider whether to accept the plaintiff's offer or proceed with the hearing, in which case he might well end up far worse off than if he had accepted the compensation offered. The defendant chose to proceed with the hearing.

17 Accordingly, I considered what would be a reasonable compensation for the house on an objective basis having regard to the two professional valuation reports obtained by the parties. I regarded the higher valuation of Knight Frank to represent a fair and reasonable compensation for the replacement cost of the house in its present condition and ordered that compensation of \$74,000 be paid by the plaintiff to the defendant. I further ordered the defendant to vacate the premises within 4 months. Each party would bear its own costs. The defendant was also ordered to pay the outstanding ground rent up to the date of delivery of vacant possession which was to be set off against the amount of compensation payable to the defendant.

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