Alvin Nicholas Nathan
v
Raffles Assets (Singapore) Pte Ltd

[2016] SGCA 18

Court of Appeal — Civil Appeal No 40 of 2015
Chao Hick Tin JA, Quentin Loh J
1 February 2016

Contract — Remedies — Damages

21 March 2016

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 This appeal concerned the question of damages due to a tenant following the premature termination of a lease agreement. The parties had entered into a two-year lease agreement, with an option to renew for another two years ("the Lease Agreement"). One year into the lease, the respondent-landlord ("the Respondent") wanted to renovate the premises and thereby gave notice to terminate the lease prematurely. As a result, the appellant-tenant ("the Appellant") had to find new premises for his business in a relatively short space of time. This caused the Appellant to first move into interim premises before he could find more suitable permanent premises.

2 Having, on 23 May 2012, successfully obtained judgment for breach of contract against the Respondent[1], the Appellant applied to court for an assessment of damages. After hearing the parties, the High Court judge ("the Judge") assessed the amount due to the Appellant. However, dissatisfied with the award, the Appellant appealed to us. While a significant part of the present appeal involved quantifying the exact loss the Appellant suffered, an important question about the legal and conceptual basis for awarding and quantifying damages pursuant to a breach of contract arose and had to be clarified.

Background facts

3 The Appellant is a sole proprietor of several businesses. His main business is in the agency distributorship for Aviva Ltd's investment and insurance products. He also runs a call service called "Eureka Call Centre System (S) Pte Ltd" which operates a centre for training of persons with disabilities.[2] The Appellant assumed occupation of 51 Merchant Road, #02-06 to #02-09, Merchant Square ("the Original Premises") as a tenant under the Lease Agreement from December 2010. He used the Original Premises for his agency distributorship business. At this juncture, we should explain that the Lease Agreement was signed by the Appellant with the then-owner and landlord on 9 November 2010. The Lease Agreement was subsequently assigned by the then-owner to the Respondent, who took over as landlord.[3] As mentioned at [1] above, the Lease Agreement was for a period of two years (from 15 December

[1] Appellant's Core Bundle (Volume II) at pp 16-17

[2] Appellant's case at para 10

[3] Respondent's case at para 1

2010 to 14 December 2012)[4], with an option for the Appellant to renew the lease for another two years subject to an increase in rent upon renewal capped at 20%.[5]

4 In early October 2011, the Respondent informed the Appellant that the Original Premises would be extensively renovated from 1 March 2012 to December 2012.[6] While the Appellant was initially told that he could remain in the Original Premises until December 2012[7], he was subsequently informed in a letter from the Respondent dated 8 November 2011 that the Lease Agreement was to be terminated prematurely and that he had to surrender the Original Premises by 29 February 2012.[8] Compensation of $39,583.36 was offered for the early termination.[9] There was a further exchange of correspondence, in which the Respondent eventually revoked its notice of termination and retracted its demand for the Appellant to surrender the Original Premises by 29 February 2012[10]. At that point, the Appellant could not agree with the Respondent's purported revocation of its notice of termination.[11] Neither could the parties reach an amicable settlement.

---

[4] Appellant's Core Bundle (Volume II) at p131, cl 1

[5] Respondent's case at para 1; Appellant's Core Bundle (Volume II) at p53, para 6.3.2

[6] The Judgment at [4]

[7] The Judgment at [5]

[8] Appellant's Core Bundle (Volume II) at p143

[9] Appellant's Core Bundle (Volume II) at p143

[10] Appellant's Core Bundle (Volume II) at p146, para 3

[11] Appellant's Core Bundle (Volume II) at p147, para 3

5 On 15 February 2012, in compliance with the Respondent's initial demand that he surrender the Original Premises by 29 February 2012, the Appellant moved to new, but interim, premises at 1 Magazine Road, #03-01 to #03-02, Central Mall ("the Interim Premises").[12] On 30 May 2012, the Appellant moved to his permanent premises at 1 Magazine Road, #07-07 to #07-11, Central Mall ("the Current Premises"), a few floors above the Interim Premises.[13] The lease of the Current Premises only commenced on 16 July 2012 and renovations were still under way, but the Appellant had no alternative because the Interim Premises were not available beyond 31 May 2012.[14] The sizes of and the costs of renting the various premises occupied by the Appellant are set out below[15]:

Premises	**Size (sq ft)**	**Rental (per sq ft per month)**
Original Premises	5,685	$4.82
Interim Premises	3,993	$5.99
Current Premises	8,073	$5.99

6 In his claim for damages before the Judge, the Appellant sought, *inter alia*, compensation for the costs of renovating the Original Premises, which was wasted because of the early termination of the Lease Agreement, as well as the costs of relocating to and renovating the Interim Premises and the Current Premises.

---

[12] Appellant's Core Bundle (Vol II) at p14, para 30

[13] Appellant's case at para 7

[14] Appellant's Core Bundle (Vol II) at p48, para 17

[15] Appellant's case at paras 8-9

The decision below

7 The High Court awarded the Appellant the following damages (see *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2015] SGHC 14 ("the Judgment")):

(a) $150,000 for wasted costs, *ie*, the costs the Appellant incurred in renovating the Original Premises, but which was wasted in part because of the premature termination of the Lease Agreement[16];

(b) $20,000 for the inconvenience of finding and moving into new premises[17];

(c) $62,654.39 for the increased rent paid per square foot for the Current Premises as compared to the Original Premises, calculated on the basis of the total area of the Original Premises (*ie*, 5,685 square feet), and on the basis that the Lease Agreement would have been renewed for two years at a 20% increase in rent[18]; and

(d) $83,962 for the costs of relocating to the Interim Premises. The Judge held it was unreasonable to award the Appellant the costs of two relocations – first to the Interim Premises, and then to the Current Premises.[19]

---

[16] Judgment at [17]

[17] Judgment at [18]

[18] Judgment at [19]-[20]; Appellant's Core Bundle (Volume I) at p21, para 1(c)

[19] Judgment at [20]

The Appellant's other claims were dismissed for being too remote.[20]

The appeal

8 Before us, the Appellant challenged three aspects of the Judge's award[21]. First, the Appellant submitted that the Judge erred in awarding him only $62,654.39 for the increased rent he had to pay. In arriving at the sum of $62,654.39, the Judge had regard to the Respondent's expert's assessment of the estimated additional rent which the Appellant needed to pay based on the higher rate of rental payable for the Interim Premises as well as the Current Premises. The Respondent's expert's assessment is summarised in the following table[22]:

Estimated loss from 1 March 2012 to 14 Dec 2012		
1	Interim Premises (1 Mar 12 to 31 May 12)	$14,099.28
2	Current Premises (16 Jul 12 to 14 Dec 12)	$33,456.23
3	Current Premises – Additional area (16 Jul 12 to 14 Dec 12)	Nil
Estimated loss from 15 December 2012 to 14 Dec 2014		
4	Current Premises	$29,198.16
5	Current Premises – Additional area	Nil
Total		$76,753.67

[20] Judgment at [21]

[21] Appellant's case at para 14

[22] Appellant's core bundle vol II at p 79

9 Items 1 to 3 relate to the period prior to the renewal of the Lease Agreement, and were calculated on the basis that the rent of the Original Premises was $4.82 per square foot per month. Item 1 was calculated on the basis that an extra $1.17 had to be paid per square foot per month for the Interim Premises, which was 3,993 square feet. Item 2 was calculated on the basis that an extra $1.17 had to be paid per square foot per month for 5,685 square feet. The "Nil" award for item 3 represents the Respondent's expert's assessment that the Appellant should not be awarded the extra rent incurred for the additional area (2,388 square feet), it being the difference in area between the Original Premises and the Current Premises ("the Excess Area"). Item 4 represented the additional rent which the Appellant had to pay for the next two years on account of the increased rental for the Current Premises, giving consideration to the fact that the rental of the Original Premises would have been increased by 20%. Similar to item 3, item 5 gives nothing for the additional rental for the Excess Area from 15 December 2012 to 14 December 2014.

10 The Judge largely agreed with the Respondent's expert's estimate of the additional rental which the Appellant had to pay, but disapproved of awarding any damages for the increased rent paid during the period when the Appellant was occupying the Interim Premises (*ie*, item 1). This was because the Judge was of the view that the Appellant could have mitigated his losses by staying on in the Original Premises rather than moving for such a brief period into the Interim Premises until the Current Premises were ready for occupation.[23] Thus, the Judge awarded a sum of $62,654.39, which was derived by subtracting $14,099.28 (item 1 at [8] above) from the Respondent's expert's total estimated rental loss of $76,753.67.

---

[23] The Judgment at [19] and [20]

11 On appeal, the Appellant first submitted that he should have been compensated for the increased rent incurred due to the Excess Area of the Current Premises, and, at the very least, that the Judge should have followed the Respondent's expert's estimate and awarded him the increased rent payable during the period he was occupying the Interim Premises.

12 Second, the Appellant submitted that the Judge erred by failing to award damages of $100,963.06 to compensate him for the costs of his relocation from the Interim Premises to the Current Premises (*ie*, the costs of the second relocation). The Judge reasoned that the Appellant could have avoided relocating twice by staying on in the Original Premises until the Current Premises were ready.[24] However, the Appellant submitted that he could not be expected to remain in the Original Premises beyond 1 March 2012 when the Respondent would be carrying out renovations thereto.[25] It was therefore not unreasonable for the Appellant to move to the Interim Premises first bearing in mind that it was the acts of the Respondent which brought about this state of affairs.[26]

13 Third, the Appellant submitted that the Judge erred in awarding only $150,000 for wasted costs. On this item of claim, the Appellant argued that the Judge was wrong to have preferred the Respondent's expert's estimates to the Appellant's expert's estimates of wasted costs.[27]

---

[24] The Judgment at [20]

[25] Appellant's case at paras 41-42

[26] Appellant's case at para 49

[27] Appellant's case at paras 63-65

Our decision

14 Having heard the parties, we dismissed the appeal. We found that while the Judge had erred in his award of damages, the result of his error was that the Appellant received *more damages* than he should have had. Given, however, that there was no cross-appeal by the Respondent, we declined to intervene in the Judge's award of damages and dismissed the appeal. We shall now explain our decision.

Costs of renting the Excess Area

15 As mentioned at [11] above, the Appellant sought compensation for the increased rent which he had to pay on account of the Excess Area. In our opinion, the Appellant was not entitled to compensation for the Excess Area. We agreed with the Judge that the Appellant's move to larger premises was, based on the evidence before the court, likely to have been a *deliberate* move on his part. The Appellant claimed that his business did not require the additional 2,388 square feet of space (*ie*, the Excess Area), and that he only accepted the Current Premises because he could not find smaller alternative premises that suited his needs. However, when questioned, the Appellant could not point to *any evidence* that he had been looking for premises that were approximately the size of the Original Premises. Instead, the Respondent brought to the court's attention the fact that the Appellant's shortlist of 18 possible properties only included premises which had an area of at least 7,000 square feet.[28] In the circumstances, given that there was no evidence that the Appellant had made any effort to find premises with similar dimensions to those of the Original Premises, we found that the Appellant had failed to mitigate his

[28] Respondent's supplementary core bundle at p 73

losses. It was unreasonable to require the Respondent to compensate the Appellant for the costs of renting premises which were approximately *50% bigger* than the Original Premises.

Costs of renting and relocating to the Interim Premises

16 The Judge held that the Appellant could have mitigated his losses by staying on at the Original Premises until the Current Premises were ready. If he did, he would not have incurred (a) two relocation costs and (b) the increased rent for the Interim Premises prior to the move to the Current Premises. The Appellant however appealed against this finding on the ground, *inter alia*, that it was not unreasonable for him to have left the Original Premises before the renovations started on 1 March 2012.

17 It is a well-established principle that "the aggrieved party must take all reasonable steps to mitigate the loss consequent on the defaulting party's breach, and cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction": *The "Asia Star"* [2010] 2 SLR 1154 ("*Asia Star*") at [24]. The burden, however, is on the defaulting party to show that the aggrieved party had failed to fulfil its duty to mitigate: *Asia Star* at [24].

18 In the present case, we found that it was not unreasonable for the Appellant to have moved out of the Original Premises before 1 March 2012 even though the permanent premises he found were not ready. The Appellant cited issues of safety for his handicapped employees, noise, inconvenience, and the lack of parking space to explain why he could not stay on in the Original Premises after renovations thereto commenced. Moreover, it being a standard stipulation in a lease that a tenant is entitled to quiet enjoyment of the premises,

in our view, it was reasonable for the Appellant to want to avoid the inconveniences the renovations would have brought about, even if shifting into the Interim Premises would have involved incurring some extra costs.

19 Further, we took into account the fact that the Respondent had initially demanded that the Appellant vacate the Original Premises by 29 February 2012 and confirmed that it was terminating the Lease Agreement prematurely.[29] This clearly constituted a repudiatory breach of the Lease Agreement by *renunciation* (see Situation 2 in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 at [93]), giving the Appellant an immediate right to terminate the contract. By way of a letter dated 17 November 2011, the Appellant exercised his right to accept the Respondent's repudiatory breach.[30] In the circumstances, we found that the Appellant had acted reasonably on the basis that he had to leave before 29 February 2012 to avoid any allegation that he was affirming the Lease Agreement despite the Respondent's repudiatory breach, or to avoid over staying on the Original Premises when he had no right to given that the Lease Agreement was effectively terminated from 29 February 2012. It should be noted that in two letters, dated 13 December 2011 and 3 January 2012, the Respondent's solicitors specifically warned the Appellant that his continued possession of the Original Premises was inconsistent with him accepting the repudiatory breach.[31] We, therefore, were of the view that it did not then lie in the mouth of the Respondent to submit that the Appellant's failure to stay on in the Original Premises was unreasonable. It was not reasonable to expect the Appellant to act in accordance with the

---

[29] Appellant's Core Bundle (Volume II) at p143 and 145

[30] Appellant's Core Bundle (Volume II) at 144, para 6

[31] Appellant's Core Bundle (Volume II) at p148, para 3; p151, para 3

Respondent's whims, *ie*, to change his plans just on account of the fact that the Respondent changed its mind about wanting the Appellant to vacate the Original Premises by end February 2012.

20 For the above reasons, we disagreed with the Judge's finding that the Appellant's failure to remain in the Original Premises until the Current Premises were ready was a failure to mitigate on his part. The Appellant therefore ought to have been awarded the extra rent incurred during the short period when he occupied the Interim Premises (see item 1 in [8] above), and the costs of relocating from the Interim Premises to the Current Premises.

21 Having said that, we disapproved of the Appellant's quantification of his relocation costs. The Appellant asserted that he spent $100,963.06 on relocation and making the necessary alterations to the Current Premises.[32] The Respondent pointed out that it was unreasonable and unforeseeable that the Appellant would spend $59,000 on the purchase and installation of individualised air-conditioning units in the Current Premises even though the Current Premises had central air-conditioning.[33] We agreed. That sum should be excluded from the claim. Thus, we would only have awarded the Appellant the sum of $41,963.06 for the costs of relocating from the Interim Premises to the Current Premises.

Wasted costs and the basis for an award of damages

22 On the claim for wasted costs incurred on the Original Premises, we could not accept the claim even though the Judge accepted and made an award

---

[32] Appellant's case at para 56

[33] Respondent's case at para 26, Respondent's supplemental core bundle at p8

based on that. While the Respondent had only raised in passing the principle that the Judge should not have awarded both expectation and reliance losses (explaining, perhaps, the absence of a cross-appeal)[34], we found that this was an important point.

23 When a contract is terminated pursuant to a repudiatory breach and damages are awarded, the court seeks to place the innocent party in the position *he would have been in if the contract had been performed*. In respect of a case where a contract is terminated pursuant to a repudiatory breach, the court held in *Hong Fok Realty Pte Ltd v Bima Investment Pte Ltd and another appeal* [1992] 2 SLR(R) 834 ("*Hong Fok v Bima*") at [24]:

> The object of the award of damages in this type of situation is *not to restore the parties to their respective positions as if the contract had not been made*, but rather, in recognition of the existence of the contract and the subsequent breach, to compensate the innocent party, as far as money can do so, for the loss, damage and injury which he has suffered as a result of the breach. It is to *place the innocent party, so far as money can do so, in the same position as if the contract had been performed.*
>
> [emphasis added]

24 Following this principle, damages for breach of contract are ordinarily assessed in terms of the claimant's *expectation loss*, which refers to the value of the benefit that the claimant would have obtained but for the breach of contract, or, to put it another way, the gains the claimant expected as a result of the full performance of the contract: Andrew Phang Boon Leong, *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract*") at para 21.033. On occasion, damages for breach of contract may be quantified in terms of the claimant's *reliance loss* – that is, the costs and expenses the claimant

---

[34] Respondent's case at paras 10-12

incurred in reliance on the defendant's contracted-for performance, but which were wasted because of the breach of contract: *The Law of Contract* at para 21.034. The basis for awarding reliance loss is the assumption that were the contract performed, the claimant would have at least fully recovered the costs and expenditure incurred: *Van Der Horst Engineering Pte Ltd v Rotol Singapore Ltd* [2006] 2 SLR(R) 586 at [54]–[55]. Indeed, in cases where a claimant enters into a bad bargain and would not have recovered all his costs/expenditure even if the contract had been performed, his losses may not be quantified by reference to his reliance expenditure: *C & P Haulage v Middleton* [1983] 1 WLR 1461 at 1468. Thus, the underlying principle, *even in cases where reliance loss is awarded*, is to place the innocent party in the position he would have been in *had the contract been performed*.

25 It should be noted that claims for expectation losses and reliance losses are generally *alternative* claims: *The Law of Contract* at para 21.037. As this court held in *Hong Fok v Bima* at [59]:

> a plaintiff cannot claim wasted expenditure and loss of profit at the same time. The reason is that a claim for profit is made on the hypothesis that the expenditure had been incurred…

Indeed, if a court awards a claimant *both* expectation and reliance losses following a breach of contract, the claimant would have been put in an even better position than he would have been in if the contract had been wholly performed. He would effectively have obtained the gains he expected as a result of the full performance of the contract, yet would not have had to incur the necessary costs in securing those gains. The claimant would thus be over-compensated.

26 Putting it in the plainest terms, had the Lease Agreement been wholly performed by the Respondent, the Appellant would have been entitled to enjoy

the use of the Original Premises at the agreed rental for a total of four years subject to the qualification that in respect of the second two year period (*ie*, the renewed term), the Appellant would have had to pay up to 20% more in terms of rental in order to enjoy the use of the Original Premises. However, in view of the breach of the Lease Agreement by the Respondent, the Appellant had to suffer the payment of higher rental rates for the use of the Interim Premises and the Current Premises. In addition, the Appellant had to incur relocation costs, *ie*, the costs of relocating from the Original Premises to the Interim Premises, and then from the Interim Premises to the Current Premises. Of course, besides the higher rental and relocation expenses incurred, the Appellant had also suffered the inconvenience of relocating, for which the Judge had awarded him the sum of $20,000 (see [7(b)] above). These were the losses suffered by the Appellant *on account of the Respondent's breach*. On payment of these sums as damages, the Appellant would effectively have been placed in a position, as far as money can buy, as if there was no breach on the part of the Respondent.

27 The problem with the award of wasted costs made by the Judge lay in the fact that it would be over-compensating the Appellant. Had the Lease Agreement been performed by the Respondent, the Appellant would still have incurred the "wasted costs", *ie*, the costs of renovating the Original Premises, to render them suitable for his purposes. In this regard, we noted that the Judge did not grant the sum claimed by the Appellant for the costs of the second relocation. In our view, there seemed to be a slight misunderstanding on the part of the Judge as to the underlying principle upon which damages were assessed. By awarding the appellant *both wasted costs and the costs of the first relocation*, the Judge effectively exempted the Appellant from having to pay *any costs* for renovating the Original Premises. While denying the Appellant damages for the costs of the second relocation did reduce the total damages which the Appellant

was entitled to receive from the Respondent, such an approach was not correct conceptually. If, as the Judge found, the Appellant was not entitled to be indemnified as to the costs of the second relocation, there should be no question of the Appellant being compensated in a different way by awarding him the costs incurred in doing up the Original Premises, *ie*, by an award of wasted costs.

28 In this regard, we should add that the Respondent suggested that the Appellant ought to have been awarded wasted costs rather than relocation costs (*ie*, reliance rather than expectation loss)[35]. We did not think that this suggestion would be in accord with principle. Conceptually, and in the circumstances here, an award of relocation costs would, as opposed to wasted costs, better achieve the law's aim of placing the Appellant in the position he would have been in *had the Lease Agreement been performed*.

29 For the reasons given, we held that the Judge should not have awarded the Appellant $150,000 for wasted costs. We noted that the Appellant had asked for an even higher amount for wasted costs. In view of our opinion on this item of claim, the question of increasing the quantum of award for wasted costs did not arise.

Conclusion

30 In conclusion, we found that the Appellant should have been awarded an extra $14,099.28 for the increased rent he incurred whilst he occupied the Interim Premises (see item 1 in [8] above), and an extra $41,963.06 for the costs of relocating from the Interim Premises to the Current Premises (see [21]

[35] Respondent's case at paras 10-12

above). However, we also found that the Appellant should not have been awarded damages of $150,000 for wasted costs (see [27]-[29] above). In the result, the Appellant was therefore better off without any appellate intervention. Given that there was no cross-appeal by the Respondent, we dismissed the Appellant's appeal and awarded costs of $30,000 (all in) to the Respondent.

Chao Hick Tin
Judge of Appeal

Quentin Loh
Judge

Suresh Damodara and Clement Ong Zi Ying (Damodara Hazra LLP)
for the appellant;
Sim Bock Eng and Jasmine Chan Mei Wen (WongPartnership LLP)
for the respondent.