IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 10

Civil Appeal No 227 of 2018

Between

HSBC Institutional Trust Services
(Singapore) Limited
(as Trustee of Capitaland Mall Trust)

… *Appellant*

And

The Chief Assessor

… *Respondent*

In the matter of Tribunal Appeal No 9 of 2018

In the matter of Order 55 of the Rules of Court (Cap 322, Rule 5)

And

In the matter of Section 35 of the Property Tax Act (Cap 254)

And

In the matter of the Valuation Review Board Appeal No 321 of 2010 and a Decision delivered on 23 May 2018 ensuing therefrom

And

In the matter of Assessment of 68 Orchard Road #07-01 to #07-15, Singapore 238839, under the Property Tax Act (Cap 254)

Between

HSBC Institutional Trust Services
(Singapore) Limited
(as Trustee of Capitaland Mall Trust)

… *Applicant*

And

The Chief Assessor

… *Respondent*

EX TEMPORE **JUDGMENT**

[Revenue Law] — [Property tax] — [Annual value]

HSBC Institutional Trust Services (Singapore) Ltd (trustee of Capitaland Mall Trust)
v
Chief Assessor

[2020] SGCA 10

Court of Appeal — Civil Appeal No 227 of 2018
Andrew Phang Boon Leong JA, Tay Yong Kwang JA and Belinda Ang Saw Ean J
25 February 2020

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Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the decision of the High Court judge ("the Judge") to affirm the Chief Assessor's 2008 assessment of the annual value of the subject property. The appellant is the trustee of CapitaLand Mall Trust, which acquired the shopping mall known as "Plaza Singapura" in 2004. The subject property ("the Property") is the seventh floor of Plaza Singapura. It has been leased to Golden Village Multiplex Pte Ltd ("GV") since 1999, when it was first leased as a "bare shell" with minimal finishes. GV spent over $7.8m on fitting-out works that included the installation of air-conditioning, cinema equipment and carpets, among other items. The final result was a fully operational 1,733-seat cinema complex as well as an office space and retail unit.

2 In 2008, the Chief Assessor determined the annual value of the Property to be $3,292,000. The appellant challenged that valuation before the Valuation Review Board ("the VRB"), the Judge and now challenges it before us. It argues that the Property should have been assessed in its bare shell state without GV's fitting-out works. Although it raised four issues before the Judge, it now concedes that the Judge was correct on the first three issues, and takes issue with only her reasoning and finding on the fourth issue, which is whether the VRB had erred in accepting the Chief Assessor's determination of annual value. Even then, the appellant has remodelled its arguments in the present appeal.

3 The appellant advances two arguments. First, though it concedes that the Judge was correct to find that some $7.37m worth of the fitting-out works ("the Works") are fixtures, the appellant argues that under the *rebus sic stantibus* principle, the Works should nonetheless be excluded from assessment as GV is obliged to remove them at the end of the lease. This argument was not raised below and the appellant has applied for leave to argue this point pursuant to O 57 r 9A(4)(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). The Chief Assessor objects to the appellant's application because before the Judge, the appellant had argued that the Works are chattels and conceded that the fixtures are subject to tax.

4 We see no need to address this point in detail because even if we were to grant leave, we are not persuaded by the appellant's argument. Under s 6(1) of the Property Tax Act (Cap 254, 2005 Rev Ed), property tax is payable upon the annual value of all houses, buildings, lands and tenements. The established common law position is that fixtures are part of the land. If the appellant concedes that the Works are fixtures, then they would be subject to assessment, unless they fall within the statutory exception in s 2(2) that need not concern us

in the present case (see the Singapore High Court decision of *Chief Assessor v HSBC Institutional Trust Services (Singapore) Limited* [2012] 3 SLR 933 at [25]).

5 The *rebus sic stantibus* or "things as they stand" principle of valuation is a principle that the assessable entity should be valued according to its physical nature and condition as well as its usage when the assessment is made (see the decision of this court in *Aspinden Holdings Ltd v Chief Assessor and another* [2006] 4 SLR(R) 521 at [32]). We are unable to agree with the appellant's characterisation of the Property "as it stands" as a bare shell one. If the Works are fixtures, the court must consider the Property as it was in 2008 – with the Works affixed – and not the hypothetical scenario where those Works have been removed at the end of the tenancy, regardless of GV's obligation under the tenancy agreements. As counsel for the Chief Assessor points out, the "attachment" that the appellant relies on is a contractual clause. It does not bind third parties and it is not an encumbrance such as an easement or zoning law that might have to be taken into account. In fact, the clause in question, cl 2.46, is one of many "Tenant's Covenants" contained in cl 2 – reinstatement is a duty and not a right belonging to the tenant.

6 The appellant's argument hinges at least in part on the fact that the Works were installed by its tenant, GV, rather than itself. The identity of the person who installed the fixtures may be relevant to the court's determination as to whether the Works are fixtures or chattels, and, in fact, the appellant had raised this issue before the Judge below. However, once the Works are found to be fixtures, the statutory tax regime does not differentiate between landlord's fixtures and tenant's fixtures. Property tax attaches to the property and not the person, although we note that there can be a separate arrangement between

landlord and tenant where the tenant agrees to pay the landlord any increase in property tax over and above the property tax payable based on the rent under the existing tenancy agreement (which is, in fact, the case here).

7 As for the appellant's reliance on the Singapore High Court decision of *Leivest International Pte Ltd v Top Ten Entertainment Pte Ltd* [2006] 1 SLR(R) 888, this case concerned a landlord-tenant dispute. To determine the appropriate rent the tenant should pay for a one-year extension of the lease, the High Court held that the tenant should not have to pay additional rent for the fixtures it had put in itself. While that is a principled approach to determine the actual rent that *same* tenant should pay, annual value is an assessment in respect of the *hypothetical* tenant.

8 In this particular situation, the landlord must surely have known that the tenant would install many of the fixtures that were ultimately installed, which included cinema seats and projection equipment. Whilst one cannot really speculate on the precise reasons as to how the landlord arrived at the rent to be charged, we would be surprised if it did not factor in the income that would be generated by the use of the premises *as a movie theatre* (which, in turn, would only be possible if the relevant fittings were installed). Clause 4 of Schedule II of the tenancy agreement signed on 7 November 2008 specifically provides for "Turnover Rent", which is an additional fee payable by GV calculated as a percentage of its box office revenue, although this clause is only engaged if there is a minimum number of cinema patrons and it appears that this minimum number was never met. Also, in this particular case at least, the landlord is by no means a babe in the woods. And as we have already noted, the tenancy agreements provide that the tenant is to pay the landlord any increase in property tax if the annual value of the Property increases.

9 And if, in fact, the Works are ultimately removed, we would assume that the value of the Property for the purposes of property tax would be adjusted correspondingly downwards if the Property is to be used for the same purpose. However, in so far as they constitute part of the fixtures of the Property, the Works are part of the "land" within the meaning of the Property Tax Act and accordingly subject to be taken into account for the purposes of property tax.

10 The appellant's second ground of appeal is that the hypothetical tenant would not ascribe any value to the Works and so the annual value of the Property would be the same as the annual value of it in a bare shell state. According to the appellant, the Judge had erred by confusing *usability* with *value*. The fact that the Works may be *usable* by another tenant does not mean that they would be *valuable* to the extent that the tenant would be willing to pay a higher rent.

11 In our judgment, the appellant has overstated (or even exaggerated) the difference between usability and value. The courts have treated the question of "annual value" as a question of the rent that a hypothetical tenant can reasonably be expected to pay, which is an objective inquiry (see the decision of this court in *HSBC Institutional Trust Services (Singapore) Limited v Chief Assessor* [2013] 2 SLR 173 at [13]). However, the appellant's proposed interpretation takes annual value out of the sphere of the "hypothetical tenant" and turns it into a question of each tenant's personal preference instead.

12 As counsel for the Chief Assessor has argued, and as the VRB and the Judge both found, most of the Works are generic and fundamental to the use of the premises as a movie theatre. The Works were only 9 years old as of 2008, not so old that they were of no value and, in any event, one of the two methodologies adopted by the Chief Assessor's expert took into account

amortisation and maintenance costs, and the expert still concluded that the Chief Assessor's valuation was not excessive. Well over half of the Works also consist of essential leasehold improvements. The appellant has not shown why generic fittings such as air-conditioning and ventilation works might be found to be *usable* but of no *value* to the hypothetical tenant. Usability and value are considerations that interact with each other, and the ultimate result will depend on the precise facts and circumstances of each case.

13 For the reasons set out above, we are not persuaded by either of the appellant's arguments and see no reason to disagree with the Judge's decision. We dismiss the appeal and having considered the respective costs schedules of the parties, we award costs to the respondent in the sum of $35,000 (all-in). There will be the usual consequential orders.

Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal	Belinda Ang Saw Ean Judge

Ong Sim Ho, Keith Brendan Lam Xun-Yu and Gan Xin Ci Emma (Drew & Napier LLC) for the appellant;
Quek Hui Ling, Pang Mei Yu and Lau Sze Leng, Serene (Inland Revenue Authority of Singapore) for the respondent.