Ritzland Investment Pte Ltd *v* Grace Management & Consultancy Services Pte Ltd [2014] SGHC 62

Case Number	: Suit No 493 of 2013 (Summons No 4457 of 2013)
Decision Date	: 07 April 2014
Tribunal/Court	: High Court
Coram	: Vinodh Coomaraswamy J
Counsel Name(s)	: Ms Ng Hui Min and Mr Sim Junhui (Rodyk & Davidson LLP) for the plaintiff; Mr Andrew Wu (Allister Lim & Thrumurgan) for the defendant
Parties	: Ritzland Investment Pte Ltd — Grace Management & Consultancy Services Pte Ltd

Civil Procedure – Summary judgment

Evidence – Estoppel against a tenant

Landlord and Tenant – Estoppel against a tenant

7 April 2014

Vinodh Coomaraswamy J:

Introduction

1 The plaintiff is the lessor of the entire property known as 231 Mountbatten Road, Singapore 397999. The property comprises a number of blocks. This dispute relates to Block C. The plaintiff sub-let units #03-02 to #03-04 on the third storey of Block C to the defendant by a letter of offer dated 12 September 2011. [note: 1] A few months later, the plaintiff sub-let the entire first storey of Block C to the defendant by a letter of offer dated 17 February 2012. [note: 2]

2 On 30 May 2013, the plaintiff sued [note: 3] the defendant asserting that the defendant had breached its obligations in respect of both sub-leases. The plaintiff claimed from the defendant arrears of rent, interest on those arrears and damages arising from the defendant's breaches of both sub-leases. [note: 4] It also sought a declaration that it had lawfully exercised its right of re-entry under one of the sub-leases. [note: 5] On 28 August 2013, the plaintiff applied under O 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) for summary judgment on its entire claim against the defendant. [note: 6] The ground of the application was the usual one: that the defendant had no *bona fide* defence to the plaintiff's claim. [note: 7]

3 On 3 December 2013, having heard the parties' submissions, I entered judgment for the plaintiff, but in respect of only part of its claim and under only one of the sub-leases. The defendant, being dissatisfied with my decision, has appealed to the Court of Appeal. Therefore, I now set out the reasons for my decision insofar as they are relevant to the defendant's appeal.

The summary judgment application

4 The plaintiff's application for summary judgment mirrored the prayers in its statement of claim and sought the following principal relief: [note: 8]

(a) In respect of the sub-lease over the entire first storey of Block C ("Premises A"):

(i) Judgment for rental arrears of $92,876.19; alternatively for such other sum as the court deemed fit; and

(ii) Interest at the rate of 5% in respect of the principal arrears of $87,744.72 from 23 May 2013 to the date of full payment by the defendant.

(b) In respect of the sub-lease covering units #03-02 to #03-04 on the third storey of Block C ("Premises B"):

(i) A declaration that the plaintiff had lawfully exercised its right of re-entry over Premises B; and

(ii) Judgment for arrears of rent of $281.10; alternatively for such other sum as the court deemed fit.

(c) Damages to be assessed.

5 Because the plaintiff's application for summary judgment included a prayer for a declaration, the entire summary judgment application had to be heard and disposed of by a judge in chambers rather than by an Assistant Registrar.

6 Having heard the parties' submissions on 3 December 2013, I made the following orders: [note: 9]

(a) I gave the plaintiff judgment on Premises A in the sum of $87,744.72 plus interest ("1st order");

(b) I gave the defendant unconditional leave to defend the plaintiff's claim in respect of Premises B ("2nd order");

(c) I entered judgment against the defendant for damages to be assessed arising from the defendant's repudiatory breach of the sub-lease of Premises A ("3rd order");

(d) I fixed the costs of the application at $5,000 and ordered the defendant to pay the plaintiff half of that sum plus half of the plaintiff's disbursements ("4th order"); and

(e) I ordered that the remaining half of the costs of the application and of the disbursements be costs in the cause ("5th order").

7 On 10 December 2013, the defendant applied for leave to present further arguments to me [note: 10] pursuant to s 28B of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") and O 56 r 2 of the Rules of Court. [note: 11] I acceded to the defendant's request and heard the further arguments on 13 January 2014. After hearing the defendant's further arguments, which I describe in more detail at [112] below, I decided not to vary the orders I had made on 3 December 2013. [note: 12] I also ordered the defendant to pay costs of $1,000 (including disbursements) to the

plaintiff for the hearing on 13 January 2014. [note: 13]

8 The defendant has appealed my 1st, 3rd, 4th and 5th orders. [note: 14] These orders relate only to Premises A. In respect of Premises B, I gave the defendant unconditional leave to defend the plaintiff's claim. I accepted that there were triable issues as to: (1) whether the plaintiff had breached its obligation to pay rent under the sub-lease of Premises B, (2) whether the plaintiff had validly exercised its right of re-entry over Premises B and (3) whether the provision in the sub-lease of Premises B for interest on unpaid arrears at 5% per month was a penalty clause. The plaintiff of course has no right of appeal against an order giving unconditional leave to defend (see s 34(1)(a) of the SCJA). I therefore refer to Premises B in these grounds only where it is necessary for the factual context.

The master lease and the sub-leases

The plaintiff's master lease of 231 Mountbatten Road

9 The property at 231 Mountbatten Road comprises buildings and over 22,000 square metres of land owned by the Government of Singapore. [note: 15] It was formerly the site of Haig Boys' School. [note: 16] As is usual, the Government left it to the Singapore Land Authority ("SLA") to handle all dealings with the property on its behalf. [note: 17] Following a successful tender in 2007, the SLA awarded the plaintiff the right to lease the property for a tenure of 3+3+3 years starting on 9 January 2008 and ending on 8 January 2017. [note: 18] The award therefore contemplated a series of 3 master leases for 3 years each.

10 The first in this series of master leases was dated 14 January 2008. [note: 19] By that master lease, the plaintiff took a lease of the property for the 3-year term from 9 January 2008 to 8 January 2011, [note: 20] with an option to renew the lease for another term of 3 years. [note: 21]

11 The SLA confirmed to the plaintiff by a letter dated 2 July 2008 [note: 22] that the Government had given a 9-year commitment to lease the property to the plaintiff ending 8 January 2017 and that that commitment was subject only to: (1) the plaintiff giving written notice of its intention to renew the lease 6 months before the term was to expire; (2) the rent for the renewed term being agreed; and (3) the plaintiff not then being in breach of the master lease. [note: 23]

12 In December 2010, the plaintiff complied with the SLA's conditions for renewal of the master lease. It thus secured the second master lease of the property on 17 December 2010 [note: 24] for the further 3-year term from 9 January 2011 to 8 January 2014. [note: 25]

13 In September 2013, while these proceedings and the summary judgment application were pending, the plaintiff once again complied with the SLA's conditions for renewal of the master lease. It thus secured the third (and final) master lease on 23 September 2013 [note: 26] for the further (and final) 3-year term from 9 January 2014 to 8 January 2017. [note: 27]

The defendant sub-leases other parts of 231 Mountbatten Road

14 The sub-leases for Premises A and Premises B which form the subject-matter of this action were not the first letting transactions between the plaintiff and the defendant involving the property.

By a tenancy agreement dated 27 May 2011, [note: 28] the plaintiff sub-let to the defendant certain units on the second storey and the whole of the third storey of Block A for a 3-year term from 15 November 2010 to 14 November 2013. [note: 29]

15 The 27 May 2011 tenancy agreement was a formal and comprehensive sub-lease setting out in detail the unconditional and contingent rights and obligations of the plaintiff and the defendant. Three aspects of this transaction are important for present purposes:

(a) The first recital to this tenancy agreement expressly recited: [note: 30]

(i) that the Government, acting through the SLA, had awarded the plaintiff the right to lease 231 Mountbatten Road for 3+3+3 years;

(ii) that the current master lease would expire on 8 January 2014; and

(iii) that the plaintiff was in the process of executing a renewal of that master lease. [note: 31]

(b) Clauses 2.1 to 2.3 of this tenancy agreement read with the second recital to it expressly entitled the plaintiff to terminate the sub-lease at any time without any obligation to compensate the defendant if the SLA were to terminate the master lease and require the return of 231 Mountbatten Road.

(c) On the same day that the plaintiff and defendant executed the 27 May 2011 tenancy agreement, they also executed a facility charges agreement. [note: 32] Clause 1 of this agreement provided that the defendant would have to pay to the plaintiff commencing 1 January 2011 a monthly facility charge of $12,480 in addition to the rent of $28,800 stipulated in the 27 May 2011 tenancy agreement.

Sub-lease for Premises B

16 By a letter of offer dated 12 September 2011, the plaintiff offered to grant the defendant a sub-lease of Premises B for a 3-year term from 1 October 2011 to 30 September 2014 at a rent (including facility and utilities charges but excluding goods and services tax ("GST")) of $17,100 per month. [note: 33]

17 In addition to expressly identifying the parties, the premises, the rent and the term of the sub-letting of Premises B, this letter of offer also expressly provided for the defendant's right to renew the sub-lease for Premises B (subject to SLA renewal of the master lease), the tenant's obligation to pay a security deposit, the plaintiff's obligation as landlord to maintain common areas, the tenant's obligation to pay stamp duty on the sub-lease and the tenant's obligation to reinstate Premises B upon expiry of the sub-lease.

18 The defendant accepted the terms set out in this letter of offer by countersigning and returning it to the plaintiff.

19 On 9 May 2012, the plaintiff and defendant entered into a formal tenancy agreement for Premises B [note: 34] embodying and expanding upon the terms set out in the preceding letter of offer. There was only a minor difference of form between the terms of the tenancy agreement and those set out in the letter of offer. The tenancy agreement stipulated the rent for Premises B as $9,000 per

month instead of $17,100. That is because, on the same day, the parties executed a facility charges agreement to accompany this tenancy agreement under which the defendant undertook to pay the plaintiff a further $8,100 a month as "facility charges" for Premises B. This sum, when added to the rent of $9,000 stipulated in the tenancy agreement, resulted in the total monthly consideration of $17,100 as stipulated in this letter of offer. [note: 35]

20 The first recital to this tenancy agreement and in this facility charges agreement again recorded the fact that: (1) the plaintiff had the right to lease 231 Mountbatten Road for 3+3+3 years; and (2) that the plaintiff's current master lease would expire on 8 January 2014. [note: 36]

Sub-lease for Premises A

21 By a letter of offer dated 17 February 2012, the plaintiff offered to grant the defendant a sub-lease of Premises A from 1 April 2012 to 31 March 2015 at a rent (excluding internal facilities and service charges and GST) of $40,654.21 per month. [note: 37]

22 A crucial point to note is that the sub-lease which this letter offered extended beyond the expiry of the master lease which was current on 17 February 2012. At that time, the plaintiff's master lease was to expire on 8 January 2014. [note: 38] The sub-lease on offer was to expire later, on 31 March 2015. [note: 39]

23 This letter of offer identified the parties, the premises, the rent and the term of the sub-lease for Premises A. But it did not confine itself to those four basic points. It also made further express provision for the defendant's right to renew the sub-lease for Premises A (subject to SLA renewal of the master lease), the defendant's obligation to pay a security deposit, the defendant's obligation to secure permission for any change of use and any fire safety certificate, the defendant's obligation to maintain the air conditioners on the premises, the plaintiff's obligation to maintain common areas, the tenant's entitlement to 3 car park spaces, the tenant's obligation to pay stamp duty on the sub-lease and the tenant's obligation to reinstate the premises upon expiry of the sub-lease.

24 On 20 February 2012, the defendant duly accepted the terms set out in this letter of offer by countersigning and returning it to the plaintiff.

25 During the renovations to Premises A, with the plaintiff's consent, the defendant demolished the wall of the security house in Premises A. The defendant thereby gained access to additional floor space. The parties agreed that the value of this additional floor space was to be an additional $348 per month in rent for Premises A. That brought the total monthly rent for Premises A to $41,002.21 per month (excluding GST) being $40,654.21 (the monthly rent stipulated in the letter of offer for Premises A) plus $348 for the additional floor space. The defendant paid this enhanced rent for Premises A from the very beginning of its sub-lease in April 2012 right until the dispute between the parties arose. [note: 40] All of this is common ground. [note: 41]

26 The sub-lease for Premises A was not followed by a formal, comprehensive tenancy agreement like the one which the plaintiff and defendant entered into on 27 May 2011 (see [14] above) and also later in respect of Premises B (see [19] above).

The effect of the letters of offer

27 I pause here to make four points.

28 First, the letter of offer for Premises A gave rise to a binding lease as soon as the defendant accepted the terms set out in it and communicated its acceptance to the plaintiff. A lease of real property is binding if it is evidenced in writing (thus complying with s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed) and sets out the following four essential elements: the parties to the lease, the property leased, the term of the lease and its commencement, and the rent payable under the lease. As authority for this proposition, the plaintiff cited the decision of Choo Han Teck J in *Asirham Investment Pte Ltd v JSI Shipping Pte Ltd* [2008] 1 SLR(R) 117. That case certainly is authority for that proposition.

2 9 *Klerk-Elias Liza v K T Chan Clinic Pte Ltd* [1993] 1 SLR(R) 609 at [51] is also binding Court of Appeal authority for the same proposition. Further, Choo J in *Asirham* relied on the decision of Judith Prakash J in *Maresse Collections Inc v Trademart Singapore Pte Ltd* [1999] SGHC 123 at [20]. Prakash J in turn traced the proposition back to *Harvey v Pratt* [1965] 1 WLR 1025, a case which the Court of Appeal also cited in *Klerk-Elias Liza*.

30 The proposition is thus so well established as to be incontestable, both in Singapore and in England. The letter of offer for Premises A is in writing and sets out these four essential elements. Indeed, as I have shown above, it went well beyond these four essential elements. It gave rise to a binding contract.

31 Second, it makes no difference to the parties' rights or obligations that the sub-lease for Premises A was not later embodied and expanded upon in a formal, comprehensive sub-lease as was the case with the 27 May 2011 tenancy agreement (see [14] above) and with the tenancy agreement dated 9 May 2012 in respect of Premises B. The letter of offer for Premises A was not subject to contract or in any way contingent upon the parties' later executing a separate formal document recording or supplementing their agreement. It was capable of giving rise to a binding contract in and of itself, subject to no conditions precedent, upon acceptance.

32 Third, permitting the sub-lease of Premises A to rest upon the letter of offer alone and not upon a comprehensive tenancy agreement caused the defendant no prejudice. It is true that by doing so, the parties failed to secure for themselves in respect of Premises A the equivalent of the many express rights and obligations which were set out in the 27 May 2011 tenancy agreement (see [14] above) and, separately, in the tenancy agreement dated 9 May 2012 in respect of Premises B. But to the extent that these formal tenancy agreements (as is usual with landlord-drafted tenancy agreements) served primarily to place duties on the tenant and to give rights to the landlord, it was the plaintiff who bore by far the greater part of the risk from this failure.

33 One example of this risk is that the plaintiff did not, under the letter of offer for Premises A, have the express protection of a right to terminate the sub-lease of Premises A in the event the SLA failed to renew the master lease. So if the SLA prematurely terminated the master lease then in force or declined to renew it upon expiry, the plaintiff would have to deliver up possession of the whole of 231 Mountbatten Road to the SLA on 8 January 2014 (see [12] above) even though that would put it in breach of its sub-lease with the defendant and expose it to a claim for damages. But this was a risk for the plaintiff to take if it so chose.

34 Finally, the sub-lease for Premises A, consisting of the duly-accepted letter of offer, made no contractual apportionment and drew no contractual distinction between "rent" and "facility charges". It simply specified the total amount that the defendant was to pay each month characterised compendiously as "Gross Monthly Rental and Facility Charges" for those premises: $40,654.21 [note: 42] plus an additional $348 for the extra floor area (see [25] above), plus GST at the prevailing rate of

7%. [note: 43] Because the parties did not go on to execute a formal tenancy agreement in respect of Premises A this lump sum was never contractually broken down and quantified in terms of its constituent elements as it was in the formal facility charges agreements which accompanied the 27 May 2011 tenancy agreement (see [15(c)] above) and the tenany agreement dated 9 May 2012 in respect of Premises B (see [19] above)). This does not change the fact that, from the outset, the defendant was obliged to pay the plaintiff a sum of $41,002.21 plus GST each month.

The defendant vacates Premises A and Premises B

The defendant's solicitors' letter dated 21 March 2013

35 The defendant duly took possession of Premises A and of Premises B and went into occupation of both. The defendant does not allege that its rights of quiet enjoyment of either set of premises was interfered with in any way, whether by the plaintiff, by the SLA or by anyone else.

36 On 21 March 2013, [note: 44] almost a year after taking possession of Premises A and well over a year after taking possession of Premises B, the defendant's solicitors wrote to the plaintiff to make – for the first time – four key points:

(a) They alleged that "it was only recently that [the defendant] found out that the … master lease granted to [the plaintiff] in respect of Premises A would expire on 8th January 2014", before the expiry of the sub-leases for Premises A and Premises B. [note: 45]

(b) On that ground, they alleged that the sub-leases of Premises A and of Premises B were "bad in law" because the plaintiff "did not have the right and/or capacity to lease Premises A to [the defendant] beyond 8 January 2014." [note: 46] As this is a recurring theme in the defendant's submissions, I shall call this the "bad in law" point.

(c) They asserted that the plaintiff had failed to furnish a formal tenancy agreement to the defendant in respect of Premises A for the defendant to execute. [note: 47]

(d) "In light of the foregoing", they gave notice to the plaintiff that the defendant would vacate Premises A and Premises B on or before 31 March 2013.

The letter concluded by demanding a full refund from the plaintiff of the security deposits paid under both sub-leases. [note: 48]

37 This letter is breathtakingly disingenuous because:

(a) The defendant did not discover for the first time on or about 13 March 2013 that the plaintiff's master lease at that time would expire on 8 January 2014. It knew this fact as early as 27 May 2011 and at the latest on 9 May 2012. It was mentioned expressly in the recital to the 27 May 2011 tenancy agreement, the 9 May 2012 tenancy agreement and the 9 May 2012 facility charges agreement.

(b) While it was true in point of fact that the plaintiff's master lease at that time would expire during the currency of the sub-lease for Premises A and B, the plaintiff had made no representation or given no warranty in those sub-leases or at their commencement about the current or continuing status of the master lease. In particular, the plaintiff did not represent or warrant that it had, at that time, a master lease which expired *after* the sub-leases expired.

Further, because the plaintiff had been awarded the tender for the property on the basis of 3+3+3 years and by reason of the SLA's confirmation of this in its 2 July 2008 letter (see [11] above), the plaintiff had a very real basis to expect that the master lease then in force would be renewed and would run up to 8 January 2017, after the expiry of the defendant's two sub-leases.

(c) There was no reason or right for the defendant to expect or demand a formal tenancy agreement to be executed for Premises A, given that the letter of offer for Premises A became a contractually-binding sub-lease upon acceptance.

38 In or around end March 2013, the defendant unilaterally ceased paying rent for Premises A and voluntarily vacated it. [note: 49] As a result, the plaintiff was spared the trouble and expense of exercising its right of re-entry over Premises A. The defendant, however, continued to retain possession of Premises B and to pay rent for it until the plaintiff claimed to exercise its right of re-entry. That is, as I have said, the subject of dispute and is one of the matters arising under the sub-lease of Premises B for which I have given the defendant unconditional leave to defend.

The plaintiff's response

39 On 17 April 2013, the plaintiff's solicitors replied to the defendant's solicitors. [note: 50] They rejected the defendant's position that the sub-leases were bad in law [note: 51] and made the following points:

(a) The defendant, whose possession of Premises A and Premises B had been undisturbed throughout, was estopped from denying that the plaintiff had the right and capacity to create sub-leases expiring after 8 January 2014; [note: 52] and

(b) The defendant was aware at all material times that the second term of the 3-year period in the master lease expired on 8 January 2014, and that the plaintiff had an option to renew the master lease for a further 3 years. [note: 53]

40 In that letter, the plaintiff also demanded payment of $87,744.72 [note: 54] being the total sum outstanding for rent for Premises A for April and May 2013 including GST. [note: 55] The letter demanded that the outstanding sum for April 2013 be paid within 7 days, *ie* by 24 April 2013 [note: 56] and that the outstanding sum for May 2013 be paid by 1 May 2013. [note: 57] The defendant did not comply with either demand.

41 On 8 May 2013, [note: 58] the plaintiff's solicitors wrote again to the defendant's solicitors demanding that the defendant pay, among other things, the outstanding sum of $87,744.72, but now with late payment interest at the rate of 5% per month. [note: 59] I pause to note that although the formal tenancy agreement in respect of Premises B expressly provided for late payment interest of 5% per month, the letter of offer for Premises A included no provision for any late payment interest. To that extent, therefore, this claim cannot be said to be based on the sub-lease between the parties.

42 On 30 May 2013, [note: 60] the plaintiff's solicitors wrote again to the defendant's solicitors. They made the following points:

(a) The defendant was in repudiatory breach of the sub-lease for Premises A by reason of the defendant's failure to pay the rent that had fallen due for April 2013 and May 2013 as well as its

conduct in unilaterally vacating Premises A;

(b) The plaintiff accepted the defendant's repudiatory breach, thereby terminating the sub-lease for Premises A; and

(c) The plaintiff held the defendant liable for all loss and damage that the defendant has and would suffer by reason of the defendant's breach of contract.

The summary judgment application

Principles on which summary judgment is granted

43 The legal principles governing an application for summary judgment are well-known. To obtain judgment, a plaintiff has first to show that he has a *prima facie* case for summary judgment (see *Associated Development Pte Ltd v Loong Sie Kiong Gerald* [2009] 4 SLR(R) 389 ("*Associated Development*") at [22]; *Rankine Bernadette Adeline v Chenet Finance Ltd* [2011] 3 SLR 756 at [10]; and *Thomson Rubbers (India) Pte Ltd v Tan Ai Hock* [2012] 1 SLR 772 at [9]).

44 If he fails to do that, his application ought to be dismissed with the usual adverse costs consequence (O 14 r 3(1) and r 7 of the Rules of Court). If he does cross that threshold, however, "the burden shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence" (see *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25]; *Associated Development* at [22]; O 14 r 3(1)).

45 I should point out, however, that the burden which shifts to the defendant upon a *prima facie* case being shown is the burden on the application or a tactical burden, not the legal or even an evidential burden of proof. It would be anomalous for a defendant to bear the legal burden of proof on a summary judgment application when at trial, that burden explicitly rests on the plaintiff. And the fact that it is for the plaintiff first to show a *prima facie* case *with knowledge of and in light of the defences raised* makes clear that no evidential burden rests on the plaintiff. It is no part of the policy underlying summary judgment to reverse a plaintiff's burden of proof.

46 The policy underlying summary judgment is twofold and comprises a private and a public element. First, summary judgment enables a plaintiff with a strong claim to secure a judgment in a period of time and at an expense which is proportionate to the dispute. Second, summary judgment proceedings enables the court to conserve scarce public resources where there is no reasonable or fair probability that deploying those resources in a full trial would make a difference to the just determination of the dispute.

47 Thus, although it is useful shorthand to speak in terms of the burden of proof shifting to the defendant, the fact remains that the court will grant summary judgment if the plaintiff shows after all the evidence is in that the there is no fair or reasonable probability that the defendant has a real or *bona fide* defence and (only if the defendant raises this point) that there is no other reason why there ought to be a trial.

48 It is clear from my foregoing narrative of facts and the interspersed analysis that the plaintiff has a *prima facie* case in respect of Premises A. I therefore turn to consider whether the defendant has a real or *bona fide* defence to the plaintiff's claim.

The defences to the claim for arrears of rent for Premises A

49 The defendant's pleaded defence [note: 61] relies on 3 points to resist the plaintiff's claim in respect of Premises A:

(a) The plaintiff did not provide the defendant with a copy of the tenancy agreement; [note: 62]

(b) The "bad in law" point (see [36(b)] above); and

(c) The letter of offer was not stamped as required under the Stamp Duties Act (Cap 312, 1997 Rev Ed). [note: 63]

50 To pre-empt the stamp duty point, the plaintiff stamped the letter of offer in respect of Premises A before applying for summary judgment. [note: 64] Mr Wu, counsel for the defendant, conceded that the issue of unpaid stamp duty is therefore no longer an issue. [note: 65] I pause, however, to make a few points.

51 Section 52 of the Stamp Duties Act provides that an instrument chargeable with stamp duty shall not be admitted in evidence in civil proceedings unless it is duly stamped. A judge has a duty not to admit in evidence any document which is on its face chargeable and unstamped. That is so whether or not an objection is taken, whether or not the unstamped document is tendered by the person liable to pay the duty and whether or not the document has through oversight been admitted and treated as evidence in interlocutory proceedings or in a lower court. However, a judge may allow an unstamped document to be admitted in evidence on the personal undertaking of counsel, as an officer of the court, to have it duly stamped save in two exceptional cases: (1) a revenue dispute; and (2) a dispute where the lack of stamping is more than a matter of evidence and goes instead to the root or validity of the document.

52 In England, it is considered unprofessional for counsel to take a stamp duty objection otherwise than in these two exceptional cases (see M J M Quinlan, *Sergeant and Sims on Stamp Duties* (Butterworths, 12th Ed, 1998) at p 208). Whether Singapore is to have the same rule of professional conduct or etiquette is for the Law Society to decide. But it is the duty of any counsel who knowingly tenders a chargeable but unstamped document to the court to draw the court's attention to that fact and the provisions of s 52 (*Malayan Banking Bhd v Agencies Service Bureau Sdn Bhd* [1982] 1 MLJ 198).

53 Having abandoned the stamp duty point, Mr Wu however added a new point in his written and oral submissions that does not appear in the defendant's pleaded defence. He submitted that it was open to the defendant to terminate the sub-lease of Premises A at any time without liability because the letter of offer for Premises A does not contain a termination clause. [note: 66]

No real or *bona fide* defence

54 In my view, none of the defences which the defendant has raised are real or *bona fide* defences to the plaintiff's claim. I deal with each of the three defences raised by the defendant which remain live.

No formal tenancy agreement was required

55 I find it impossible to see how the fact that the plaintiff failed to give the defendant a tenancy

agreement to sign in respect of Premises A could conceivably be a defence to the plaintiff's claim.

56 With or without a formal tenancy agreement, the plaintiff and the defendant had a valid and binding sub-lease. The letter of offer for Premises A set out the only four terms which are essential for a lease to arise (see [28] above). The parties proceeded from the outset until the defendant's solicitors' letter of 21 March 2013 on the basis that the duly accepted letter of offer constituted a binding sub-lease and governed their relationship. The defendant took possession of Premises A in accordance with the letter of offer. It duly paid the rent and facility charges stipulated by the letter offer for Premises A. It did so without complaint for almost a year. The plaintiff accepted that payment. The defendant enjoyed quiet possession of Premises A.

57 The defendant argues that it had been asking the plaintiff for a formal tenancy agreement in respect of Premises A from the outset. [note: 67] That does not take its defence anywhere. The letter of offer constituted a tenancy agreement or a lease (the terms are interchangeable in law). There was no need in law and no obligation by contract for the parties to enter into a separate, formal tenancy agreement or for the defendant to be given a copy of one. The defendant puts forward no legal basis for this defence.

58 The defendant's first ground of defence is thus wholly without merit. Indeed, it should not even have been advanced as a defence.

The "bad in law" point is bad in law

59 The defendant's second ground of defence is the "bad in law" point. Although it was not clearly articulated, the point appears to be that the plaintiff did not have a leasehold title to 231 Mountbatten Road out of which it could carve the sub-lease granted to the defendant over Premises A and Premises B. Mr Wu said that this means that the sub-lease of Premises A is voidable [note: 68] and unenforceable [note: 69]. Hence, he said, the defendant was entitled to vacate Premises A when it did and to do so unilaterally and without incurring any liability. [note: 70] The defendant's submission on this point, like its other submissions, was entirely unencumbered by authority [note: 71] or by reason.

Plaintiff did not lack title

60 The plaintiff was not in breach of any aspect of the rule that *nemo dat quod non habet* by entering into a sub-lease for Premises A (and indeed Premises B) which expired after its master lease then in force. That may have been the position if the plaintiff's master lease had been defective, if it had sub-leased Premises A to the plaintiff for a longer duration than the master lease permitted for sub-leases or if it had no reason to expect the master lease to be renewed so as to expire after the sub-lease of Premises A.

61 But those are not the facts. The plaintiff undoubtedly had the right to exclusive possession of the entirety of 231 Mountbatten Road at the time the sub-leases were entered into. It undoubtedly had the right to part with exclusive possession of sections of 231 Mountbatten Road by entering into sub-leases. The master lease imposed no restriction on the duration of these sub-leases. The plaintiff also had every reason to expect that the master lease then in force would be renewed so as to expire after the sub-leases. That expectation was eventually realised. The 'bad in law' point fails on this alone.

No warranty or representation

62 Even if there was any lack of title, it did not affect the rights of the parties *inter se*. The starting point for the analysis is that a lease creates both contractual rights and obligations good as against the counterparty and proprietary rights good against the world (*Singapore Woodcraft Manufacturing v Mok Ah Sai* [1979] 2 MLJ 166; *Tan Soo Leng v Lim Thian Cai Charles* [1998] 2 SLR 923 at pp 931 – 932; *Lim Kim Som v Sheriffa Taibah bte Abdul Rahman* [1994] 1 SLR 393; *Batshita International (Pte) Ltd v Lim Eng Hock Peter* [1997] 1 SLR 241; *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675).

63 The fact that a putative landlord does not have any or any sufficient proprietary right out of which he can carve and convey a valid leasehold interest to a putative lessee affects only the *proprietary* right which ought to arise under the lease. It does not affect the parties' *contractual* rights. Therefore a lack of sufficient title may prevent the parties from having a *lease*. But it will not prevent the parties from having a *contract*. For the defendant to succeed in showing that the parties did not have a *contract*, the defendant must establish one of the vitiating factors under the law of contract.

64 Any lack of title would affect the contractual position if the plaintiff represented or warranted to the defendant that it had a master lease which expired after the sub-lease for either Premises A or Premises B. There is no evidence that the plaintiff made any representation about the state of the master lease before the sub-lease for Premises A. Indeed, the facts show quite the opposite: the defendant knew as early as 27 May 2011 that the master lease then in force expired on 8 January 2014. Further, the plaintiff made no promise about the state of its master lease to the defendant in the sub-lease. In the circumstances, there is no basis for the defendant to disavow its contractual obligations to the plaintiff under the sub-lease for Premises A.

Tenancy by estoppel

65 In any event, I accept the plaintiff's submission that the defendant is estopped from denying the plaintiff's leasehold title to 231 Mountbatten Road. For this submission, the plaintiff relied on s 118(1) of the Evidence Act (Cap 97, 1997 Rev Ed). That section provides that a tenant is estopped during the continuance of a tenancy from denying that the landlord had title to the immovable property at the beginning of the tenancy. I set out s 118 in full:

> **Estoppel of tenant and of licensee of person in possession**
>
> **118**.—(1) No tenant of immovable property, or person claiming through such tenant, shall *during the continuance of the tenancy* be permitted to deny that the landlord of the tenant had at the beginning of the tenancy a title to the immovable property.
>
> [Emphasis added]

66 The difficulty in this case lies in the words I have italicised above. The defendant took the position that the lease was "bad in law" in March 2013. At that time, the tenancy of Premises A was continuing. But by the time the plaintiff's application for summary judgment came up for hearing before me, it was common ground that that tenancy had terminated. The question then arises whether s 118 applies to estop the defendant.

67 This section gives effect to one half of the doctrine of tenancy by estoppel at common law. Furthermore, it enacts that half of the doctrine as it was understood at the time of its enactment in 1893. The full doctrine of tenancy by estoppel is bilateral: applying both to the landlord and the tenant. Wee Chong Jin J put the doctrine in this way in *Methani v Perianayagam* [1961] 1 MLJ 5,

relying on English common law:

> The doctrine is that a tenant may not question his landlord`s title and, conversely, that a landlord having by his offer of a tenancy induced a tenant to enter into (or remain in) occupation and to pay rent, cannot deny the validity of the tenancy by alleging his own want of title to create it (see Harman J delivering the judgment of the Court of Appeal in *EH Lewis & Son Ltd v Morelli* [1948] 2 All ER 1023 at p 1024).

68 The principles underlying tenancy by estoppel are summarised by the learned authors of Tan Sook Yee, Tang Hang Wu and Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) ("*Principles of Singapore Land Law*") at para 17.23 as follows:

> "The principle of estoppel as it applies in this context is that it precludes a person who has held out that a certain state of facts exists, thereby inducing the other party to act on this to his detriment, from denying the truth of the state of facts. In the context of landlord and tenant relationship, it means that a landlord, who may in fact have no title or estate that would support the lease he had purported to grant, is precluded from denying that he had such a right. Likewise, the tenant in such a case, provided his possession is undisturbed, is precluded from denying that the landlord has the title to create the tenancy. The estoppel arises either by deed or by the landlord's umambiguous representation as to his title which the tenant relies upon when he takes the lease. Thus, where the parties accept that there is a landlord and tenant relationship between them even though the landlord may not have the interest to generate the tenancy, a tenancy by estoppel arises …"

69 Lord Hoffmann in *Bruton v London & Quadrant Housing Trust* [2000] 1 AC 406 at p 413 clarified that it is the relationship between the parties which precedes and gives rise to the estoppel:

> "… it is not the estoppel that creates the tenancy, but the tenancy which creates the estoppel. The estoppel arises when one or other of the parties wants to deny one of the ordinary incidents or obligations of the tenancy on the ground that the landlord has no legal estate. The basis of the estoppel is that having entered into an agreement which constitutes a lease or tenancy he cannot repudiate that incident or obligation."

70 This view taken to its logical conclusion is not without difficulty. It amounts to saying that *any* contractual promise to give a person exclusive possession of real property amounts to a lease whether or not the person making the promise has a a valid right over the property out of which he can carve and convey a leasehold interest (see Bright, "Leases, Exclusive Possession and Estates" (2000) 116 LQR 7; Dixon, "The Non-Proprietary Lease: The Rise of the Feudal Phoenix" (2000) 59 CLJ 25). Indeed, taken to its logical conclusion, this view does away with a tenancy by estoppel altogether since there will on this view always be an *actual* tenancy arising from the contract between the parties whether or not the contract is capable of giving rise simultaneously to a proprietary interest.

71 Nevertheless, the point made is a useful one for present purposes. In a claim, as here, where a plaintiff is relying on purely personal rights against the defendant, Lord Hoffman's point rightly puts the focus on the parties' personal rights and obligations arising from the contract between them and the estoppel which precludes one or other from denying that contract rather than on the proprietary rights which a lease ought to create but which for lack of title have failed to arise from this contract.

Traditional view of the estoppel at common law

72 The common law rule embodied in s 118(1) was restated by the English Court of Appeal in *Harrison v Wells* [1967] 1 QB 263. In that case, a tenant surrendered and vacated premises at the end of a lease. Some nine months later, the landlord commenced proceedings against the tenant claiming damages for breach of the tenant's covenant to repair. The tenant then learned that the landlord had not, in fact, had title to enter into the lease at all. It raised that point by way of defence. The Court of Appeal characterised this as "without a shred of merit" (at p 276G). It nevertheless relied on *Cuthbertson v Irving* (1859) and the report of that case at 28 LJ Ex 306 to hold that the estoppel is founded upon the principle that a tenant cannot take the advantages derived from a lease while at the same time denying the landlord's right to grant that very lease. As soon as the tenant surrenders possession of the leased property, he ceases to take the advantages derived from the lease and is therefore no longer bound by the estoppel. In the absence of any case cited to it where the estoppel was held to bind the tenant even after the tenant had surrendered possession, the Court of Appeal therefore held that the tenant was not estopped from denying the landlord's title.

73 That view of the law, then, is the justification for the words I have italicised in s 118 at [65] above. The obvious flaw in that view is that the fact that a tenant has surrendered possession and is no longer taking any advantages derived under the lease does not change the fact that during the term of the lease, he took those advantages. The breach of covenant must also have arisen, by definition, during its term when the tenant was still bound by the lease. It appears to be entirely arbitrary and entirely inequitable that if the landlord sues a tenant on a flagrant breach of covenant one day after the tenant has surrendered possession under the lease, the landlord will fail because the estoppel no longer applies whereas if he had sued just one day earlier, while the tenant was still in possession, the landlord would have succeeded.

74 Both situations seem to fall within the overarching principle set out by Martin B in *Cuthbertson v Irving* (at p 310) and cited by the Court of Appeal in *Harrison v Wells* (at p 274A):

> This state of the law in reality tends to maintain right and justice and the enforcement of the contracts which men enter into with each other (one of the great objects of all law), for so long as the lessee enjoys everything which his lease purports to grant, how does it concern him what the title of the lessor or who the heir or the assignee of the lessor, really is? All that is required of him is, that having the full consideration for the contract he has entered into, he should on his part perform his.

Modern view of the estoppel at common law

75 The common law has evolved to address the abitrariness of limiting the availability of this estoppel to the period that the tenant is in possession of the leased property. In *Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd* [1977] 1 QB 580 ("*Industrial Properties*"), the material facts were identical to *Harrison v Wells*. The tenant argued that it was not liable for its breach of the covenant to repair because it was no longer in possession of the property and was therefore free to deny the landlord's title to it on the authority of *Harrison v Wells*.

76 Roskill LJ acknowledged that *Harrison v Wells* would have arbitrary and inequitable results (at p 602E):

> If this be the law, certain startling results follow. Take a lease defective in the respects alleged here requiring payments of rent quarterly in arrears so that the last payment falls due on the day upon which the lease expires by effluxion of time. Assume the lessee has not made any of the last four quarterly payments. If the lessor sues for and obtains summary judgment for the first

three of those four instalments during the currency of the lease it is conceded that the estoppel would operate to prevent the lessee from alleging the defective title as a defence to those claims. But if the lessee, as would be the fact, cannot sue for the last instalment until after the expiry of the lease, the estoppel will not on this view of the law operate. The muzzle has been removed and this defence can then be used to defeat the lessor's claim for the last quarter, even though the lessee has had exactly the same benefit from his unchallenged possession of the premises, which have purported to have been demised to him under the lease, for the last quarter as for the preceding three.

77 The Court of Appeal in *Industrial Properties* was able to avoid this startling result by holding that *Harrison v Wells* had misinterpreted *Cuthbertson v Irving*. The error, it held, arose because the attention of the Court of Appeal in *Harrison v Wells* had not been drawn to a different and fuller report of the first instance and appellate decisions in *Cuthbertson v Irving*. Those reports made clear that *Cuthbertson v Irving* was indeed a case where the tenant had relinquished possession of the leased premises but was nevertheless held estopped. The Court of Appeal held therefore that *Harrison v Wells* had been decided *per incuriam* and ought to be overruled. Lord Denning stated the true rule thus (at p 599):

> The doctrine of tenancy by estoppel has proved of good service and should not be whittled down. It should apply in all cases as between landlord and tenant – no matter whether the tenant is still in possession or gone out of possession – so long as he is not confronted with an adverse claim by a third person to the property.

Cases on s 118(1) or its equivalent

78 I consider next authorities from Malaysia which have analysed these same words in s 116 of the Malaysian Evidence Act 1950 (Act 56). That section is identical to s 118 of our Act subject only to immaterial textual differences.

79 These Malaysian cases endorse the view of the estoppel taken in *Harrison v Wells*. Thus, 'during the continuance of the tenancy' has been interpreted to mean that the tenant is estopped from denying the title of the landlord so long as the tenant is still in possession (*Government of the State of Penang v BH Onn & Ors* [1971] 2 MLJ 235 at 237 (Privy Council) on appeal from Malaysia) and that he is no longer estopped once he surrenders possession whether upon determination of the lease by reason of effluxion of time (*Singma Sawmill Co Sdn Bhd v Asian Holdings (Industralised Buildings) Sdn Bhd* [1980] 1 MLJ 21 at p 24) or for any other reason (*Tan Chee Lan v Dr Tan Yee Beng* [1997] 4 MLJ 170 ("*Tan Chee Lan*") at p 186; *Rosman bin Haji Abdul Rashid v Rosmah Begum bte Bahadur Beg* [1993] 2 MLJ 196 at p 202; *Tan Kim Kuan v Liew Yew Sang* [1973] 1 MLJ 213 at p 214).

80 The Malaysian authorities have taken this view despite expressly acknowledging the evolution of the common law position in England in *Industrial Properties*. In *Tan Chee Lan*, the court declined to follow *Industrial Properties* in favour of *Harrison v Wells*. The court held (at p 187):

> … the reasoning by the English Court of Appeal in *Industrial Properties* … that the estoppel continues to operate even after the expiry of the lease is, with utmost respect, incompatible with the meaning contemplated by s 116. *Harrison v Wells* … which was overruled by that case accords with our law.

Singapore cases on s 118(1)

81 There are no Singapore decisions which have considered s 118 in general, let alone the meaning

and effect of the words 'during the continuance of the tenancy' within it. There are, however, three decisions in Singapore in which it was held either as *ratio* or in *obiter dicta* that a tenancy by estoppel had arisen. None of these decisions refers to s 118. They instead state the position at common law (*Methani v Perianayagam* [1961] 1 MLJ 5; *Thode Gerd Walter v Mintwell Industry Pte Ltd* [2009] SGHC 44 at [10] and *Song Brothers Marketing v Kalpanath Singh s/o Ramraj Singh trading as Raj Wines* [2010] SGDC 280 at [22]).

82 The potential difficulty has been noted by the learned authors of *Principles of Singapore Land Law*, who comment at para 17.24 that:

> "[Section 118(1)] provides that 'during the continuance of the tenancy', no tenant shall be permitted to deny that his landlord had, at the beginning of the tenancy, a title to the property. There are no Singapore authorities on this point, but the Malaysian position is that the section limits the application of the principle to the 'continuance of the tenancy' so that if the tenancy had terminated when the action was brought, section 118 would not be applicable. If this is correct, the question then is whether section 118 excludes the application of the common law which does not so restrict the principle. Whilst there might be room for argument that the Evidence Act does not prevent the application of the common law, this is only so where there is a lacuna. However, in this instance, it is not a matter of a lacuna since section 118 provides for the situation."

83 Four significant anomalies arise if s 118(1) prescribes a different rule from the doctrine of tenancy by estoppel at common law.

84 The first anomaly arises because s 118 applies only to a tenant whereas the doctrine of tenancy by estoppel applies bilaterally to both landlord and tenant. Assume, for example, a landlord who has exercised a right of re-entry and forfeited a lease. The tenant is out of possession but applies for relief against forfeiture. Can it be correct that the tenant is estopped from relying on the landlord's lack of title under s 118(1) (the lease no longer continuing) but the landlord is not similarly estopped because s 118(1) applies only to tenants?

85 The second anomaly arises because the doctrine of tenancy by estoppel is a doctrine of the substantive law. It binds the parties as events unfold, independently of whether they have a dispute and, if they do, independently of whether or not they later choose to commence action to resolve that dispute and thereby subject themselves to the procedural law. The Evidence Act, on the other hand, is purely procedural law. As its long title makes clear, it is simply an Act "relating to the law of evidence". It affects the parties only if they commence proceedings. The result is that a tenant could be bound by a tenancy by estoppel as a matter of substantive law outside court but be free to disavow that tenancy as a matter of evidence in court.

86 The third anomaly arises because the Evidence Act governs only a subset of the law of evidence: the rules which apply to *viva voce* evidence at trial. As s 2(1) makes clear, nothing in the Evidence Act – which includes s 118(1) – applies to affidavits. Thus, on an interlocutory application like the one before me where the court receives all evidence by affidavits, the common law estoppel would apply. But at trial in the very same dispute, s 118(1) would apply.

87 The fourth anomaly arises from an ambiguity about the time at which the condition in s 118(1) is tested. If a landlord commences proceedings against a tenant while the tenant is in possession but the adjudication – whether on summary judgment or at trial – takes place after the tenant has surrendered possession, the effect of s 118(1) would be that the tenant has somehow acquired a right to deny the landlord's title which he did not have when the proceedings commenced.

88 Fortunately, there is an approach to s 118(1) which resolves all these anomalies. The starting point is to note that the Evidence Act approaches the estoppel binding the tenant as a rule of evidence. It is true that the Evidence Act is a comprehensive code of evidence. This is not to say, however, that the common law of evidence has no place in Singapore's law of evidence. The Evidence Act does not repeal *all* common law rules of evidence, merely those that are *inconsistent* with the rules of evidence set out in the Act (see Margolis, "The Concept of Relevance" (1990) 11 Sing LR 24 at p 26). The real question then is not whether a particular common law rule of evidence fills a *lacuna* in the Evidence Act. The question is whether that common law rule is *inconsistent* with the Evidence Act.

89 On that view, s 118(1) prescribes a rule of evidence which applies to a tenant during the continuance of the tenancy. That rule of evidence says nothing about any estoppel which may or may not apply to a tenant after the determination of the tenancy, whether by effluxion of time or otherwise. Section 118(1) is not, on that view, inconsistent with the common law rule which provides that the estoppel "continues to operate and bind the parties even after the term has ended except where the tenant is dispossessed by a third party with a superior title to his landlord" (per Belinda Ang Saw Ean in *Thode Gerd Walter v Mintwell Industry Pte Ltd* [2009] SGHC 44 at [10]). Indeed, on this view, the common law rule of evidence complements s 118(1) rather than contradicting it. The result of taking this approach is that the same principle applies whether it is raised against a landlord or a tenant, whether it arises out of court or in the context of litigation and whether it arises in *viva voce* evidence at trial or in affidavit.

90 The result of this approach on the facts of this case is twofold. First, the defendant is precluded before me from denying the plaintiff's title to the demised premises even though the tenancy had been determined at the time I granted the plaintiff summary judgment. Second, the position would be precisely the same if I had determined this issue after a trial.

91 In any event, I hold that the point in time at which the defendant's ability to deny the landlord's title is to be tested is the time at which the denial takes place and not the point in time at which any ensuing dispute falls to be determined by the court. On the facts of this case, the defendant denied the plaintiff's title in March 2013, before the tenancy had been determined in May 2013. In March 2013, the defendant was estopped from denying the plaintiff's title. That is so either because the common law rule of estoppel applied to the defendant, the parties not then in litigation, or because s 118(1) somehow applied to the plaintiff (despite there being no litigation) but at that time the tenancy was continuing. The defendant nevertheless purported to rely on this denial of title to justify its unilateral determination of the sub-lease for Premises A. The validity of its position is a historical question to be determined as at the date it took that position. On that date, it was precluded from denying the plaintiff's title. On that date, it had no legal basis to terminate the sub-lease. It was and is therefore in breach of the sub-lease.

No termination clause in the sub-lease of Premises A

92 Mr Wu's final point is that the defendant incurred no liability by vacating Premises A unilaterally at the end of March 2013 because there is no termination clause in the sub-lease. [note: 72] Therefore, he submits, there are no contractual restrictions on the defendant's right to terminate the sub-lease such as a minimum period of notice. [note: 73]

93 This argument too is totally without merit. A lease is a species of contract which creates personal as well as proprietary rights (see [62] above). A party to a contract has only the contractual rights which that contract, on its true construction, gives to him either expressly or

impliedly, subject always to any overriding principles under the general law.

94 One of the fundamental purposes of a lease is to bind the lessor to give – and to bind the lessee to take – exclusive possession of real property for a term, typically though not necessarily in consideration of a periodic or lump sum payment (*Street v Mountford* [1985] AC 809 at p 818; cf *Ashburn Anstalt v Arnold* [1989] Ch 1 at p 9). That fundamental purpose is ordinarily inconsistent with either the lessor or the lessee having a unilateral right to terminate a lease during its term otherwise than for breach.

95 If such a right is to exist, it must arise from very clear, express words in the lease or by a clear and compelling implication from the circumstances. There are no clear words or circumstances supporting any such implied term here. Indeed, the defendant does not even suggest that there are: Mr Wu relies on the absence of a termination clause alone for his submission. The absence of a termination clause in fact means that neither the plaintiff nor the defendant had a right to terminate that sub-lease prematurely without cause. The absence of a termination clause, far from supporting the defendant's case that it incurred no liability by its premature termination, supports the plaintiff's case that the defendant breached the sub-lease by terminating it as it did.

96 In the course of submissions, I asked Mr Wu what was the source of his client's right unilaterally to terminate the sub-lease for Premises A. Instead of referring to an express or implied term in the sub-lease, he submitted that he relied on the "bad in law" point. [note: 74] I then pointed out to Mr Wu that if that was what the defendant relied on to justify terminating the sub-lease prematurely, the right arose not because of the absence of a termination clause but because of the "bad in law" point. Mr Wu accepted this position. [note: 75] The result is that the defence based on the absence of a termination clause in the sub-lease adds nothing to the defendant's "bad in law" point and is ultimately irrelevant. [note: 76]

Relief

Termination of the sub-lease for Premises A

97 For the foregoing reasons, the plaintiff satisfied me that, even taking into account the matters of fact and law raised by the defendant, there was no fair or reasonable probability that the defendant had a real or *bona fide* defence to the plaintiff's claim that the defendant was in breach of the sub-lease of Premises A. Further, that breach entailed unilaterally ceasing to pay rent, unilaterally renouncing the lease and voluntarily vacating Premises A. That breach evinced clearly if not expressly the defendant's intention no longer to be bound by the sub-lease. The plaintiff took the position, therefore, that this conduct amounted to a repudiatory breach of contract under the general law of contract which the plaintiff duly accepted on 30 May 2013, thereby validly bringing the sub-lease to an end (see [42(b)] above). The plaintiff is correct in the result but not the reasoning.

98 The trend in the cases in England has been to assimilate the personal rights of parties to leases more and more with the personal rights of parties under the general law of contract. Thus, it is now clear that a lease can come to an end in ways derived from the law of contract, and not just in the ways derived from the law of leases (see *National Carriers* and *Hammersmith and Fulham London Borough Council v Monk* [1992] AC 478). This is, however, always subject to rights and obligations which arise under the law of leases from the proprietary nature of a lease and, further, to any attempted contractual variation of those rights and obligations. So where a *landlord* commits a repudiatory breach of a lease, it gives the tenant a right to accept that repudiatory breach and bring to an end the prospective obligations of the parties to the lease just as it would in respect of an

ordinary contract (see *Hussein v Mehlman* [1992] 2 EGLR 87; *Protax Co-operative Society Ltd v Toh Teng Seng* [2001] SGHC 84 at [66]).

99 But it must always be remembered that a lease creates a proprietary interest vested in the tenant. So where it is the *tenant* who is in repudiatory breach of a lease, it seems that the rules of forfeiture, of relief against forfeiture and of re-entry arising under the law of leases continue to apply. It appears that this is so even if the result is to the tenant's disadvantage (see *Reichman v Beveridge* [2005] EWCA Civ 1659).

100 In this case, the defendant vacated Premises A voluntarily. No issues of relief against forfeiture or of the plaintiff's right of re-entry arise. Before the plaintiff accepted the repudiatory breach and brought the sub-lease for Premises A to an end, it put the defendant on reasonable notice of its breaches and gave the defendant a reasonable opportunity to cure those breaches. The defendant failed to do so. The result is that the sub-lease for the Premises therefore came to an end, although not for the reason in law advanced by the plaintiff.

Prospective loss: damages to be assessed

101 There are two consequences of the sub-lease for Premises A coming to an end on 30 May 2013. First, the defendant is liable to the plaintiff for its failure to perform its primary obligations under the sub-lease up to and including 30 May 2013. Second, the defendant comes under a secondary obligation by reason of its breach to pay damages to the plaintiff for its loss and damage arising after 30 May 2013.

102 My third order entering judgment against the defendant for damages to be assessed arising from the defendant's breach of the sub-lease for Premises A deals with the plaintiff's prospective loss after 30 May 2013.

Past loss: judgment for $87,744.72

103 As relief for its loss up to and including 30 May 2013, the plaintiff was entitled to the arrears of rent for Premises A for the months of April and May 2013. The plaintiff quantified this in its statement of claim and in its application for summary judgment as $92,867.19 comprising principal arrears of $87,744.72 plus interest. I shall deal with the plaintiff's claim for interest first, and then with its claim for the principal sum.

Claim for interest at 5% per annum

104 The plaintiff claimed contractual interest on the principal arrears at the rate of 5% per month. [note: 77] As the basis for this entitlement, the plaintiff relied on a stipulation as to interest at 5% per annum which appears on the monthly invoices which the plaintiff rendered to the defendant for rent and facility charges in respect of Premises A throughout the period that the defendant was in occupation. [note: 78] These invoices came after the contract between the plaintiff and the defendant had been formed by way of the accepted letter of offer. The sub-lease that that gave rise to contains no provision to this effect. [note: 79] The stipulation in the invoices cannot be read back into the sub-lease so as to be a term of the sub-lease. Nor was there a course of conduct by which the defendant's obligation to pay interest on arrears of rent at this rate can be implied. [note: 80] I therefore disallowed the plaintiff's claim for contractual interest.

Calcluation of the principal arrears

105 The principal arrears which the plaintiff claims is $87,744.72. That is the sum demanded in its solicitors' letter dated 8 May 2013 (see [40] above). This sum is derived as follows. The gross monthly rent and facility charges for Premises A stipulated in the sub-lease is $40,654.21. To that must be added the agreed sum of $348 for the additional floor area demised to the defendant (see [25] above). That gives $41,002.21 per month. Adding 7% GST to that sum gives $43,872.36 per month ($41,002.21 x 1.07). Multiplying that amount by 2 months and rounding down to the nearest cent gives $87,744.72.

106 Immediately before I entered judgment for this figure, I asked Mr Wu specifically whether the defendant disputed this figure put forward by the plaintiff. He said unequivocally that it did not: [note: 81]

> "Ct: …
>
> Mr Wu, any issue with the figure of $87,744.72 which the plaintiff claims as the principal amount of rental in arrears for Premises A?
>
> DC: No."

107 I accordingly entered judgment against the defendant for this sum under the first order.

Statutory pre-judgment interest

108 I further allowed the plaintiff's claim for the customary pre-judgment interest under s 12(1) of the Civil Law Act at 5.33% per annum from 30 May 2013 (the date on which the writ was issued) until 3 December 2013 (the date on which I gave judgment for this sum).

Costs

109 The plaintiff defeated each of the three points which the defendant relied on to resist the plaintiff's claim for summary judgment in respect of Premises A. It is true that the greater part of the hearing was spent on the plaintiff's application for summary judgment in respect of Premises B. But the "bad in law" point was a point which the defendant relied on to resist the application for judgment in respect of both Premises A and Premises B. That point was totally unsustainable. Bearing that in mind, and taking into account that these things cannot be weighed too finely, my view was that the time spent on the arguments with respect to Premises A was roughly equal to the time spent on the arguments with respect to Premises B (leaving aside the "bad in law" point).

110 In the exercise of my discretion, therefore, I ordered that the costs of and incidental to the plaintiff's summary judgment application be fixed at $5,000 excluding disbursements and be apportioned equally between the hearing on Premises A and the hearing on Premises B. In the result, I ordered the defendant to pay half those costs to the plaintiff (to follow the event on Premises A) and that half those costs be costs in the cause (because the defendant secured unconditional leave to defend in respect of Premises B).

Further arguments

111 On 10 December 2013, the defendant sought an opportunity to put further arguments before me. [note: 82] I acceded to that request and heard the defendant's further arguments on 13 January 2014. After hearing the defendant's further arguments, I found them to be without merit. [note: 83] I

therefore declined to vary my orders made on 3 December 2013. [note: 84]

112 The defendant's further arguments related only to the orders made in respect of Premises A and, more specifically, on the quantum of arrears for which judgment ought to be entered. [note: 85] Mr Wu's further arguments sought to show that the arrears for Premises A was not $87,744.72 [note: 86] but $45,325.20. [note: 87]

113 I pointed out to Mr Wu that I had asked him specifically at the initial hearing whether the defendant disputed the plaintiffs' figures and that he had said that it did not (see [106] above). [note: 88] Mr Wu accepted that but said that his focus on 3 December 2013 had been on Premises B and that he did not notice any problem with the figures until one of the defendant's directors pointed one out to him after the hearing on 3 December 2013. [note: 89]

114 Mr Wu's further argument relied on the plaintiff's invoicing practice under the sub-lease for Premises A. Without exception, from the start of the sub-lease in April 2012 until the defendant vacated Premises A at the end of March 2013, the plaintiff sent two invoices to the defendant towards the beginning of each month. Without exception, one invoice sought payment of $22,662.60 for "rent" for Premises A. Without exception, the other invoice sought payment of $21,209.76 for "facility charges" for Premises A. Therefore, Mr Wu argued, [note: 90] the arrears of rent for Premises A was only $22,662.60 per month.

115 He further argued that if Premises A were unoccupied – as they were in April 2013 and May 2013 – the defendant had no obligation to pay facility charges. Taking what he said was the monthly rent of $22,662.60 and multiplying it by two, he submitted that the arrears of rent for Premises A for April and May 2012 were only $45,325.20. [note: 91]

116 Mr Wu's submission was misconceived. The defendant's obligation to pay rent and facility charges arose under the sub-lease comprised in the accepted letter of offer. The gross sum specified in the letter of offer for both rent and facility charges was $40,654.21. To that must be added the agreed sum of $348 per month for the additional floor area ($41,002.21) and GST ($43,872.36). The sub-lease did not break this gross sum down between rent and facility charges. Further, the sub-lease contained no proviso that the defendant was no longer obliged to pay facility charges if it ceased to continue to occupy Premises A. That would be a startling result, particularly if the defendant ceased to occupy Premises A by reason of its own breach of the sub-lease, as was the case.

117 The sub-lease simply and clearly made the total sum of $43,872.36 payable every month. [note: 92] It provides: [note: 93]

> "Gross monthly rental and facility charges: $40,564.21 [Singapore Dollar Forty Thousand Six Hundred Fifty Four and Cents Twenty One Only] subject to the prevailing GST excluding internal facilities and service charges."

118 Once the terms of the sub-lease of Premises A were agreed and evidenced in writing, how the plaintiff chooses to invoice the defendant and how it chooses to characterise elements of the gross monthly rent and facility charges can have no contractual consequence on the defendant's monthly monetary obligation. The fact that the plaintiff's invoicing drew a distinction between rent and facility charges does not affect the defendant's contractual obligation to pay the plaintiff the sum of

$43,872.36 every month. Therefore, I did not vary my decision of 3 December 2013. Bearing in mind that the point raised was again unsustainable and that I had given Mr Wu the opportunity to address me on this particular figure at the initial hearing, I was also of the view that the costs of the further arguments should follow the event. I therefore ordered the defendant to pay to the plaintiff the costs of and incidental to the further arguments fixed at $1,000 including disbursements.

Conclusion

119 In light of the above, I granted the summary judgment in respect of Premises A in the orders set out at [6] above without any variation.

[note: 1] Letter of Offer at STH-8 (p 114) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 2] Letter of Offer at STH-7 (p 107) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 3] Writ of Summons dated 30 May 2013; Statement of Claim dated 30 May 2013.

[note: 4] Writ of Summons dated 30 May 2013; Statement of Claim dated 30 May 2013.

[note: 5] Writ of Summons dated 30 May 2013; Statement of Claim dated 30 May 2013.

[note: 6] Summons under O 14 filed on 28 August 2013.

[note: 7] Plaintiff's Skeletal Submissions (Summons No 4457 of 2013), paragraph 36 – 57.

[note: 8] Summons under O 14 filed on 28 August 2013.

[note: 9] Summons for leave to appeal filed on 20 January 2014; Affidavit by Wu Chih Wei Andrew dated 20 January 2014.

[note: 10] Request for further arguments filed on 10 December 2013; Letter from Allister Lim & Thrumurgan dated 10 December 2013.

[note: 11] Letter from Allister Lim & Thrumurgan dated 10 December 2013, paragraph 5.

[note: 12] Notes of Argument dated 13 January 2014, p 7, lines 8–14.

[note: 13] Notes of Argument dated 13 January 2014, p 7, lines 21–22.

[note: 14] Summons for leave to appeal filed on 20 January 2014; Affidavit by Wu Chih Wei Andrew dated 20 January 2014.

[note: 15] Tenancy Agreement between Government of Singapore and plaintiff made on 14 January 2008 in STH-1 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 16] Clause 1.1 Tenancy Agreement between Government of Singapore and plaintiff made on 14 January 2008 in in STH-1 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 17] Paragraph 5 of the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 18] SLA letter dated 2 July 2008 in STH-2 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 19] Tenancy Agreement at STH-1 (p 28) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 20] Clause 1.1 of Tenancy Agreement between Government of Singapore and plaintiff made on 14 January 2008 in in STH-1 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 21] Clause 2.1 of Tenancy Agreement between Government of Singapore and plaintiff made on 14 January 2008 in in STH-1 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 22] SLA letter dated 2 July 2008 in STH-2 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 23] SLA letter dated 2 July 2008 in STH-2 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 24] Tenancy Agreement between Government of Singapore and plaintiff made on 17 December 2010 in STH-3 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 25] Clause 1.1 of Tenancy Agreement between Government of Singapore and plaintiff made on 17 December 2010 in STH-3 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 26] Tenancy Agreement between Government of Singapore and plaintiff made on 23 September 2013 at STH-23 (p 19) to the Affidavit of Sng Thian Hock filed on 4 October 2013.

[note: 27] Clause 3.1 of Tenancy Agreement between Government of Singapore and plaintiff made on 23 September 2010 in STH-23 to the Affidavit of Sng Thian Hock filed on 4 October 2013.

[note: 28] Tenancy Agreement between plaintiff and defendant made on 27 May 2011 at STH-4 (p 66) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 29] Tenancy Agreement between plaintiff and defendant made on 27 May 2011 at STH-4 (p 85) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 30] Tenancy Agreement between plaintiff and defendant made on 27 May 2011 at STH-4 (p 67) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 31] Recital 1 to Tenancy Agreement between plaintiff and defendant at STH-4 (p 67) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 32] Facility Charges Agreement between plaintiff and defendant made on 27 May 2011 at STH-4 (p 90) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 33] Letter of Offer dated 12 September 2011 in STH-8 (p 114) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 34] Tenancy Agreement dated 9 May 2012 in STH-8 (p 121) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 35] Recital 1 to Tenancy Agreement between plaintiff and defendant at STH-8 (p 122) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 36] Recital 1 to Tenancy Agreement between plaintiff and defendant at STH-8 (p 122) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 37] Letter of Offer dated 17 February 2012 in STH-7 (p 107) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 38] Clause 1.1 of Tenancy Agreement between Government of Singapore and plaintiff made on 17 December 2010 in STH-3 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 39] Letter of Offer in STH-7 of the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 40] Paragraphs 15 to 17 (p 4) of the Affidavit of Sng Thian Hock filed on 4 October 2013.

[note: 41] Notes of Argument dated 13 January 2014, p 7, lines 1 – 6.

[note: 42] Letter of Offer dated 17 February 2012 in STH-7 (p 107) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 43] Letter of Offer dated 12 September 2011 in STH-5 (p 99) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 44] Letter from Allister Lim & Thrumurgan dated 21 March 2013, STH-11 (p 159) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 45] Letter from Allister Lim & Thrumurgan dated 21 March 2013, paragraph 3 in STH-11 (p 159) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 46] Letter from Allister Lim & Thrumurgan dated 21 March 2013, paragraphs 5 and 8 in STH-11 (p 159) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 47] Letter from Allister Lim & Thrumurgan dated 21 March 2013, paragraph 6 in STH-11 (p 160) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 48] Letter from Allister Lim & Thrumurgan dated 21 March 2013, paragraphs 7 and 11 in STH-11 (p 160) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 49] Affidavit of Sng Thian Hock filed on 28 August 2013, paragraph 23.

[note: 50] Letter from Rodyk & Davidson LLP dated 17 April 2013 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 51] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraphs 6 – 8 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 52] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraph 7 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 53] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraph 8 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 54] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraphs 10 – 13 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 55] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraphs 10 – 13 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 56] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraph 12 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 57] Letter from Rodyk & Davidson LLP dated 17 April 2013, paragraph 12 in STH-13 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 58] Letter from Rodyk & Davidson LLP dated 8 May 2013, at STH-14 (p 174) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 59] Letter from Rodyk & Davidson LLP dated 8 May 2013, paragraph 5 in STH-14 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 60] Letter from Rodyk & Davidson LLP dated 30 May 2013, at STH-22 (p 215) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 61] Defence and Counterclaim (Amendment No. 1) filed on and re-filed on 2 July 2013 and re-filed on 2 August 2013.

[note: 62] Defence and Counterclaim dated 2 August 2013, paragraph 2.

[note: 63] Defence and Counterclaim dated 2 August 2013, paragraph 4.

[note: 64] Notes of Argument dated 3 December 2013, p 4, lines 27 – 29.

[note: 65] Notes of Argument dated 3 December 2013, p 10, lines 7 – 9.

[note: 66] Defendant's Written Skeletal Submissions dated 12 November 2013, paragraphs 18 – 21.

[note: 67] Defendant's Written Skeletal Submissions dated 12 November 2013, paragraph 16.

[note: 68] Notes of Argument dated 3 December 2013, p 8, lines 1 to 4.

[note: 69] Defence and Counterclaim dated 2 August 2013, paragraph 3.

[note: 70] Defence and Counterclaim dated 2 August 2013, paragraph 3.

[note: 71] Notes of Argument dated 3 December 2013, p 8, lines 14 to 18.

[note: 72] Defendant's Written Skeletal Submissions dated 12 November 2013, paragraphs 18 – 21.

[note: 73] Notes of Argument dated 3 December 2013, p 9, lines 7 to 10.

[note: 74] Notes of Argument dated 3 December 2013, p 9, lines 12 – 16.

[note: 75] Notes of Argument dated 3 December 2013, p 9, line 17.

[note: 76] Notes of Argument dated 3 December 2013, p 12, lines 10 – 14.

[note: 77] Statement of Claim, p 13. Notes of Argument dated 3 December 2013, p 12, lines 21 – 26.

[note: 78] Affidavit of Sng Thian Hock filed on 4 October 2013, paragraph 19; Tax Invoices in STH-24 to the Affidavit of Sng Thian Hock filed on 4 October 2013.

[note: 79] Tenancy Agreement between plaintiff and defendant made on 27 May 2011 at STH-4 (p 85) to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 80] Notes of Argument dated 3 December 2013, p 12, lines 27 – 28.

[note: 81] Notes of Argument dated 3 December 2013, p 16, lines 13 – 15.

[note: 82] Request for further arguments filed on 10 December 2013; Letter from Allister Lim & Thrumurgan dated 10 December 2013, paragraph 4.

[note: 83] Notes of Argument dated 13 January 2014, p 7, lines 8 – 14.

[note: 84] Notes of Argument dated 13 January 2014, p 7, lines 21 – 22.

[note: 85] Letter from Allister Lim & Thrumurgan dated 10 December 2013, paragraph 6.

[note: 86] Letter from Allister Lim & Thrumurgan dated 10 December 2013, paragraph 7.

[note: 87] Letter from Allister Lim & Thrumurgan dated 10 December 2013, paragraph 15.

[note: 88] Notes of Argument dated 3 December 2013, p 16, lines 13 – 15.

[note: 89] Notes of Argument dated 13 January 2014, p 1, lines 37 – 40.

[note: 90] Notes of Argument dated 13 January 2014, p 6, lines 5 – 8.

[note: 91] Letter from Allister Lim & Thrumurgan dated 10 December 2013, paragraph 15.

[note: 92] Letter of Offer in STH-7 to the Affidavit of Sng Thian Hock filed on 28 August 2013.

[note: 93] Letter of Offer in STH-7 to the Affidavit of Sng Thian Hock filed on 28 August 2013.