

Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point)
Pte Ltd) v Y.E.S. F&B Group Pte Ltd
[2014] SGHC 246

Case Number : Suit No 1073 of 2013
Decision Date : 24 November 2014
Tribunal/Court : High Court
Coram : Edmund Leow JC
Counsel Name(s) : Edwin Tong, Kenneth Lim Tao Chung, Chua Xinying, Lee May Ling and Chua Xinying (Allen & Gledhill LLP) for the plaintiff; Tan Gim Hai Adrian, Loh Jien Li, Ong Pei Chin and Lim Siok Khoon (Stamford Law Corporation) for the defendant.
Parties : SOUP RESTAURANT SINGAPORE PTE LTD (FORMERLY KNOWN AS SOUP RESTAURANT (CAUSEWAY POINT) PTE LTD) — Y.E.S. F&B GROUP PTE LTD

Landlord and Tenant – Subleases

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 193 of 2014 was allowed by the Court of Appeal on 2 October 2015. See [\[2015\] SGCA 55.](#)]

24 November 2014

Judgment reserved.

Edmund Leow JC:

Introduction

1 This dispute concerns the interpretation of two clauses in a sub-lease agreement between the parties. The clauses in question pertain to the duration of the sub-lease.

2 Two diametrically opposed interpretations were advanced by the parties. The plaintiff contends that the sub-lease was terminated by the effluxion of time at the end of a three-year term. On the other hand, the defendant argues that there was no termination of the sub-lease and that the sub-lease was still in existence at the material time because it was either automatically renewed or renewed at the option of the defendant.

The facts

3 The plaintiff is a subsidiary of Soup Restaurant Group Limited ("SRGL") which is a Singapore-incorporated public limited company engaged in the food and beverage business. SRGL runs a chain of restaurants known as "Soup Restaurant" while the defendant operates a chain of restaurants known as "Dian Xiao Er". By way of background, from 2006 to 2012, SRGL and its subsidiary jointly held a 50.98% majority shareholding in the defendant. The defendant subsequently ceased to be a subsidiary of the plaintiff when the founders of the defendant, Mr Yik Kuen Koon ("Yik") and Ms Eliza Gunawan Ruan Yi ("Eliza"), bought over the 50.98% shareholding pursuant to the terms of a settlement agreement dated 14 June 2012.

4 On 13 April 2006, the defendant obtained a lease at #02-137/138, 1 Harbourfront Walk, VivoCity ("the Neighbouring Unit"). A few months later in October 2006, the defendant started operating its restaurant, Dian Xiao Er, at these premises. Sometime in April 2009, the leasing manager

of VivoCity ("the Landlord") offered the defendant an opportunity to lease unit #02-141 ("the Unit"). As mentioned, the defendant was at that time a subsidiary of the plaintiff. Discussions ensued between the parties regarding the lease for the Unit and it was eventually agreed that the plaintiff would lease the Unit from the Landlord from 19 October 2009 ("the Head Lease"). In a sub-lease agreement dated the same day, the plaintiff agreed to sub-let approximately 742 square feet of the Unit ("the Sub-Lease Area") to the defendant.

5 On 9 November 2010, the founders of the defendant, Yik and Eliza, brought a minority oppression action against the plaintiff. This action was eventually settled. The terms of the settlement agreement dated 14 June 2012 provided, *inter alia*, that Eliza and Yik would buy out the plaintiff's majority stake for a consideration of \$7,901,900.

6 On 28 August 2012, the defendant wrote to the Landlord proposing a merger of the Sub-Lease Area and Neighbouring Unit. The Landlord replied on 3 September 2012 stating that it did not agree to the proposed merger. A few days later on 7 September 2012, the Landlord offered to renew the plaintiff's lease. This was accepted by the plaintiff on 11 September 2012 and confirmed in a lease agreement dated 26 November 2012 ("the 2nd Head Lease").

7 On 1 October 2012, the plaintiff informed the defendant to deliver vacant possession of the Sub-Lease Area by 6 October 2012. Shortly after, the plaintiff brought the present action against the defendant claiming damages and possession of the Sub-Lease Area. The plaintiff's application for bifurcation in Summons No 1221 of 2014 was granted on 3 April 2014 and on 22 May 2014, the defendant made an offer, on the basis that it would be without prejudice to its rights, to hand over the Sub-Lease Area to the plaintiff. The offer was eventually accepted by the plaintiff on 11 September 2014.

The parties' submissions

8 The plaintiff submits that its lease with the Landlord for the Unit came to an end on 18 October 2012 and therefore the sub-lease must have similarly expired on the same date. The plaintiff also highlights that the renewed Head Lease for the Unit must be regarded as a new lease in law and that the sub-lease did not provide for an automatic renewal of the sub-lease upon the renewal of the head lease. In any case, the alleged "automatic" sub-lease lacked the essential ingredients of a tenancy such as the quantum of rent payable and duration of the term.

9 The defendant contends that it was entitled to lease the Sub-Lease Area so long as the plaintiff held the Head Lease. Since the Head Lease provided for a term of three years with an option to renew for a further three years, the defendant argues that the parties must have intended for the same to apply to the sub-lease. The defendant also contends that the Head Lease was renewed and not terminated because termination had a specific meaning in the terms of the Head Lease. On 13 October 2014 which was the eve of the trial, Yik filed a supplementary affidavit stating that he had an agreement with Wong Chi Keong, a director of the plaintiff, that the plaintiff would lease the Sub-Lease Area to the defendant so long as the plaintiff was the head tenant of the Sub-Lease Area. Yik further averred that the sub-lease was envisaged to be at least six years, *ie*, three years with an option for another three years.

Issue

10 The sole issue in these proceedings is whether the sub-lease agreement was terminated by effluxion of time on 18 October 2012.

Whether the sub-lease agreement was terminated by effluxion of time on 18 October 2012

The relevant legal principles

11 I start with the legal requirements for a lease. It is established law that the following are essential terms of a lease: (a) the premises to be leased; (b) the identity of the landlord and tenant; (c) the commencement and duration of the term; and (d) the rent and other consideration (see Tang Hang Wu and Kelvin F K Low, *Tan Sook Yee's Principles of Land Law* (LexisNexis, 2009) ("Tan Sook Yee") at para 17.26).

12 To elaborate, for a fixed term lease, there must be certainty of duration in relation to the length of the lease. In *Lace v Chantler* [1944] KB 368, the English Court of Appeal held that a tenancy for "the duration of the war" was not sufficiently certain for the creation of a valid leasehold interest (at 370):

... A term created by a leasehold tenancy agreement must be expressed with certainty and specifically or by reference to something which can, *at the time when the lease takes effect*, be looked as a certain ascertainment of what the term is meant to be. ...

[emphasis added]

13 A lease may be terminated on various grounds. One example of particular relevance here is termination upon the expiration of the agreed period, or in other words, the effluxion of time (see E H Burn and J Cartwright, *Cheshire and Burn's Modern Law of Real Property* (Oxford University Press, 18th ed, 2012) ("Cheshire and Burn") at p 330). It should also be noted that when the head tenancy comes to an end, any sub-tenancy derived out of it automatically comes to an end (see Cheshire and Burn at p 345).

14 The present dispute also engages the process of contractual interpretation in which the intended meaning of contractual terms is ascertained. This process involves ascribing to words the meaning which the parties, using those words against the relevant background, would have reasonably been understood to mean (see Andrew Phang Boon Leong gen ed, *The Law of Contract in Singapore* (Academy Publishing, 2012) at para 06.042). The purpose of construction is to identify and give effect to the parties' objectively ascertained intentions, having regard to the overall commercial purpose of the transaction (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at 1095).

Application of the law to the facts

15 With these principles in mind, I turn to the facts at hand. The parties' submissions centred on the terms of the sub-lease agreement which state as follows: [\[note: 1\]](#)

1. Soup Restaurant (Causeway Point) Pte Ltd (the "Company") had entered into an agreement (the "Agreement") with VivoCity Pte Ltd as trustee of VivoCity Trust ("the Landlord") on 19 June 2009 in respect of the lease of 1 HarbourFront Walk #02-141 VivoCity S(098585) to operate both "Soup Restaurant" and "Dian Xiao Er" ("DXE") brands.

2. Y.E.S F & B Group Pte Ltd ("YES") had sub-leased a part of the above space to operate DXE with the consent from *[sic]* the Landlord.

3. By entering into this agreement, YES agrees:

- i) To be bounded [*sic*] by the same terms and conditions in the lease agreement between the Company and the Landlord on a back-to-back basis; and
- ii) To pay the Company a monthly fixed rental of \$9,284.64 (excluding prevailing GST) for an area of 742.70 square feet in advance on the first day of each month without demand.

4. This agreement shall survive as long as the Company's lease with the Landlord is not terminated.

16 After carefully considering the parties' respective cases, I am of the view that the sub-lease was terminated by effluxion of time on 18 October 2012.

17 First, the Head Lease commenced on 19 October 2009 and terminated by effluxion of time on 18 October 2012 when its three-year term came to an end. It follows that the sub-lease also terminated on 18 October 2012 because:

- (a) cl 1 of the sub-lease agreement refers to the Head Lease and not to any other lease agreement;
- (b) Schedule 1 of the Head Lease states that the term of the Head Lease was for three years and expired on 18 October 2012; [\[note: 2\]](#)
- (c) in law, the existence of a sub-lease is premised on the subsistence of the head lease from which it is derived (see [13] above); and
- (d) cl 4 of the sub-lease agreement acknowledges the legal position stated above in [20(b)], *ie*, the sub-lease would end upon the termination of the Head Lease.

18 The defendant argues that there was no termination of the Head Lease because it was *renewed*. To support this argument, it submits that:

- (a) Pursuant to the "back-to-back" arrangement in cl 3(i) of the sub-lease agreement, the parties had intended for the sub-lease agreement to be renewed for a further term of three years when the Head Lease was renewed.
- (b) The word, "termination", in the sub-lease agreement should be interpreted to mean termination by the Landlord. [\[note: 3\]](#)
- (c) When the sub-lease agreement was signed, the plaintiff was a profitable subsidiary of the defendant and the parties enjoyed a cordial relationship as members of the same corporate group.

19 Although the defendant's argument may seem intuitively attractive at first blush, it is on considered reflection plainly untenable. On 18 October 2012 the Head Lease was terminated by effluxion of time and a new lease was entered into on the next day; the new lease cannot be regarded in law as a continuation of the previous lease. The defendant did not controvert this proposition or bring to my attention any authorities to the contrary.

20 Moreover, the 2nd Head Lease was concluded on terms that were materially different from

those found in the Head Lease. The 2nd Head Lease stipulated a higher rent and provided for rent escalation under which the rent payable automatically increased every year. I would also point out that the term of the 2nd Head Lease was three years six months instead of three years. These clauses were the result of substantive negotiations between the Landlord and the plaintiff that took place over the course of a few months. Given these facts and the clear position in law, I find it difficult to accept the defendant's submission that the 2nd Head Lease was a mere continuation or renewal of the Head Lease.

21 In addition, the defendant's reliance on the back-to-back arrangement did not advance its case because the expiry date of the Head Lease was explicitly stated to be 18 October 2012 and therefore, following the logic of the back-to-back arrangement, the sub-lease would have expired on the same date.

22 Yik testified under cross-examination that the parties' intention was for the sub-lease to terminate only if the *Landlord* terminated the Head Lease: [\[note: 4\]](#)

Q: ... Mr Yik, you'll agree [the sub-lease agreement] doesn't say by whom it is to be terminated in this sublease?

A: Your Honour --

Q: Do you agree?

A: Your Honour, yes, I agree. Although the intention was -- to say in there, it's not terminated by the landlord.

Q: And with whom did you discuss that intention?

A: Your Honour, I can remember as the substance or the intention at that time is -- mainly is we get to exist together. If now I have to sacrifice three quarter for you, so you have to --

Q: I ask you a very specific question. ... With whom did you discuss that intention. Please answer the question. It's very precise.

A: Here, okay, your Honour, the subsequent agreement was not properly drafted by a professional did not say who.

Q: ... And then I asked you with whom did you discuss that intention, so please answer my question.

A: Your Honour, my discussion with -- at that time, most of the thing I refer to is Wong Chi Keong or Wong Wei Teck or Mok ... For this incident, even though I may not have been very clear of the with whom, but the essence, or the spirit, the meaning is that you exist, I exist, it's co together, although I may not have exactly mentioned terminated by who or I do not think I remember, I do not remember.

Q: So am I correct to say that you never had any such discussion?

A: Your Honour, I'm afraid I cannot remember whether I touch on the -- but with whom or by whom.

It is evident from the excerpt of the transcript set out above that Yik's testimony in this regard rested on shaky ground and I accordingly place little weight on it.

23 The defendant attempted to shore up its position by reference to Yik's supplemental affidavit that was filed on the eve of trial. In that affidavit, Yik alleged that there was an agreement between Mr Wong of the plaintiff and himself that the plaintiff would lease the Sub-Lease Area to the defendant as long as the plaintiff remained the tenant of the Sub-Lease Area. According to Yik, it was envisaged that the sub-lease would be at least six years, *ie*, three years with an option for another three years. Counsel for the defendant, Mr Adrian Tan, clarified during closing submissions that Yik was not alleging that there was an oral agreement between Mr Wong and Yik. Mr Tan submitted that Yik was merely providing the context in which the sub-lease agreement was signed.

24 In my judgment, the filing of Yik's supplemental affidavit was plainly a belated attempt on the defendant's part to support its interpretation of the sub-lease agreement. It is unclear what Yik's testimony regarding the agreement between Mr Wong and himself adds to the defendant's case because the same agreement is apparent from the terms of the sub-lease agreement. As for Yik's testimony that the term of the sub-lease was envisaged to be six years, this did little to advance the defendant's case because it was an unsubstantiated and untenable assertion when seen in the light of the other circumstances of this case (see below at [27]–[32]). I accordingly place no weight on the assertions made in Yik's supplemental affidavit.

25 Mr Tan submitted in oral argument that the plaintiff's contemplation of the merger implied that they did not think that the sub-lease was ending in October 2012. Mr Tan relied on an email dated 12 July 2012 from the Landlord to the plaintiff which states: [\[note: 5\]](#)

Dear Mr Mok,

We have received the surveyed plan from Tang Tuck Kim surveyor and the additional area currently occupied by Dian Xiao Er is 76 sq m / 818.06 sq ft. *As the area is occupied by Dian Xiao Er, you have requested for it to be excluded for your new lease at #02-141.* Taking into consideration the reduction in area, we are pleased to propose the following terms for your consideration.

...

[emphasis added]

I am of the view that this email must be seen in the light of the other emails between the plaintiff and the Landlord. In particular, reference should be made to the Landlord's email to the plaintiff on 12 June 2012 proposing their "best settling rent" for the Unit, including the Sub-Lease Area. The plaintiff's reply dated 24 July 2012 to the 12 July 2012 email is also relevant: [\[note: 6\]](#)

Dear Dorothy,

We refer to our tele-conversation on 18 July 2012.

As explained, we wish to renew our lease for the entire area of 3369.13 sf, i.e. including the area currently occupied by Dian Xiao Er.

We hereby confirm our acceptance of your proposed terms as per your email of 12 June 2012 ...

Viewing the correspondence between the plaintiff and the Landlord as a whole, the most that can be said of the 12 July 2012 email is that the plaintiff at one point in time considered giving up the lease in relation to the Sub-Lease Area. To my mind, this is simply not indicative of the plaintiff's view of the sub-lease one way or the other.

26 In the circumstances, I find that there is no basis for the defendant's attempts at characterising the termination of the Head Lease and the commencement of the new lease as a mere renewal *without termination*.

27 Second, the terms of the "renewed" sub-lease that purportedly came into effect after the termination of the initial sub-lease on 18 October 2012 were unclear. The amount of rent payable per month for the "renewed" lease, an undoubtedly fundamental term of any lease agreement, was not agreed to by the parties [\[note: 7\]](#) and no such term can be formed. Neither was such a term stipulated in the sub-lease agreement itself. I should add that this defect cannot be cured by reference to the original rent payable under cl 3(ii) because the quantum of rent payable under the 2nd Head Lease had increased [\[note: 8\]](#) and Yik admitted that the defendant may not have agreed to pay a higher rent. [\[note: 9\]](#)

28 The second uncertain aspect of the purported sub-lease is its duration. It is important to appreciate that the continuation of the sub-lease hinged on two important premises, namely, the continuation of both the Head Lease and the defendant's head lease with the Landlord. The former has already been explained above at [17]. As for the latter, Yik admitted that the defendant's head lease had no further option to renew after 6 October 2012 [\[note: 10\]](#) and that the defendant would not have continued leasing the Sub-Lease Area without leasing its own premises. [\[note: 11\]](#) The sub-lease agreement only provided for a fixed monthly rent but did not provide for turnover rent (*ie*, rent charged as a percentage of total monthly turnover) because the defendant paid turnover rent directly to the Landlord for both the Neighbouring Premises and the Sub-Lease Area. The continuation of the sub-lease was therefore contingent on the continuation of the defendant's head lease because once the lease for the Neighbouring Premises ended, the sub-lease would similarly come to an end – no turnover rent would then be payable on the Sub-Lease Area. In those circumstances, the Landlord would in all likelihood not have allowed the sub-lease to continue on the terms stated in the sub-lease agreement.

29 Given this uncertain backdrop, it is understandable that the sub-lease agreement neither stipulated for the duration of the renewed lease nor did it provide for an option to renew the sub-lease. Therefore, I find that these necessary ingredients for a lease to exist at law were glaringly absent on the evidence before me.

30 Third, the defendant's interpretation of the terms in the sub-lease agreement is unpersuasive because it is one-sided and commercially unreal. Yik testified under cross-examination that the sub-lease contained all the terms of the Head Lease under the "back-to-back" arrangement but the defendant would only be bound by the terms that were "practical". [\[note: 12\]](#) Yik further explained that the defendant would not be bound by unfair or disadvantageous terms [\[note: 13\]](#) and that he could decide which terms of the Head Lease applied to the defendant. Apart from the difficulties in deciding which terms were unfair or disadvantageous, the defendant's version of the sub-lease agreement would plainly be unfair to the plaintiff and would not accord with commercial reality. Yik seems to have recognised this when he admitted that he would not have been able to find such a lease for the defendant's other restaurants. [\[note: 14\]](#)

31 Moreover, Yik's evidence regarding the terms of the sub-lease agreement kept shifting and it was difficult to discern a consistent and coherent position from his testimony. For example, Yik testified under cross-examination that the sub-lease was automatically renewed upon the renewal of the Head Lease and that the defendant would be bound by all the terms therein. [\[note: 15\]](#) He then testified that the defendant might not be bound by all the terms and whether the defendant was bound was contingent on the prevailing situation at that time. [\[note: 16\]](#) He further elaborated that it was the defendant's right whether to go with the terms stipulated in the Head Lease. [\[note: 17\]](#) When asked whether the defendant negotiated and agreed to a revised rent for the sub-lease as stated in one of the terms of the Head Lease, Yik conceded that the defendant did not so [\[note: 18\]](#) and that he did not know what the revised rent payable under the sub-lease agreement was. [\[note: 19\]](#) In sum, Yik seems to have been caught between a position that was inconsistent with the sub-lease agreement and one that did not accord with commercial realities. Due to these inconsistencies in Yik's evidence, I do not find him a credible witness.

32 In conclusion, the sub-lease was terminated by effluxion of time on 18 October 2012. Accordingly, the defendant was in wrongful possession of the Sub-Lease Area and is liable to damages which will be assessed at a separate forum.

Conclusion

33 For the foregoing reasons, I allow the plaintiff's claim with costs to be agreed or taxed.

[\[note: 1\]](#) Yik's AEIC at p 161.

[\[note: 2\]](#) Agreed Bundle of Documents vol 2 at p 862.

[\[note: 3\]](#) NE 14/10/2014 p 179:12–14.

[\[note: 4\]](#) NE 14/10/2014 p 181:8–182:23.

[\[note: 5\]](#) Pf's Bundle of Documents ("BOD") at p 167.

[\[note: 6\]](#) Pf's BOD at p 176.

[\[note: 7\]](#) NE 14/10/2014 p 99:22–100:6.

[\[note: 8\]](#) Agreed Bundle of Documents Vol 2 at pp 862–863, 1108–1109.

[\[note: 9\]](#) NE 14/10/2014 p 92:23–93:3.

[\[note: 10\]](#) NE 14/10/14 p 63:1–7.

[\[note: 11\]](#) NE 14/10/14 p 75:17–19; NE 16/10/14 p 79:5–23.

[\[note: 12\]](#) NE 14/10/14 p 65:3–5.

[\[note: 13\]](#) NE 14/10/14 p 66:15–25.

[\[note: 14\]](#) NE 15/10/14 p 150:2–13.

[\[note: 15\]](#) NE 14/10/14 p 90:12–19.

[\[note: 16\]](#) NE 14/10/14 p 92:4–9.

[\[note: 17\]](#) NE 14/10/14 p 93:6–7.

[\[note: 18\]](#) NE 14/10/14 p 99:1–3.

[\[note: 19\]](#) NE 14/10/14 p 100:3–6.

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