ISO Industry Pte Ltd
v
Fu Loong Lithographer Pte Ltd

[2016] SGHC 03

High Court — Suit No 309 of 2014
Foo Chee Hock JC
27, 28 July; 25 September; 28 October 2015

Contract — Contractual terms — Express terms

Contract — Breach

11 January 2016

Foo Chee Hock JC:

Introduction

1 In my Grounds of Decision, I shall be using the following abbreviations:

Document	Abbreviation
"Plaintiffs' Closing Submissions" dated 17 August 2015	Plaintiff's 1st WS
"Plaintiffs' Reply Submissions" dated 19 October 2015	Plaintiff's 2nd WS
"Defendants' Closing Submissions" dated 17 August 2015	Defendant's 1st WS
"Defendants' Reply Submissions" dated 7 October 2015	Defendant's 2nd WS
"Defendants' Skeletal Supplemental Submissions" dated 28 October 2015	Defendant's 3rd WS

2 On 19 March 2015, Hoo Sheau Peng JC ordered, by consent of the parties, that:

> 1. The Plaintiff's claim on the transfer of business be bifurcated with the issue of whether the Plaintiff had sold and the Defendant had purchased the Plaintiff's dormitory business or the Plaintiff's assets, fixtures and fittings at the 3rd and 4th floors of 2 Kampong Ampat, Singapore as at 1 June 2012, be determined before directions on the valuation be given; …

3 Following this, and other developments in the case (for example, para 2 of the above Order of Court did not feature in the trial),[1] the issues to be determined at the trial (which essentially followed the Defendant's articulation) were as follows[2] (the abbreviations used in this list of issues shall be adopted for my Grounds of Decision):

> (a) Was the agreement between parties reached sometime in June 2012 for *the Defendant* to purchase *the Plaintiff's entire* business or *only the Plaintiff's* assets in the Premises *(3rd and 4th floors of 2 Kampong Ampat Singapore)*?
>
> *Turning to the Defendant's counterclaims:*
>
> (b) Was there an express agreement between the parties or representations made by *the Defendant* for *the Plaintiff* to remain at the Premises after the expiry of the 2009 Tenancy Agreement?
>
> i. Is *the Plaintiff* liable for double rent from 1 March 2011 to 31 May 2012?
>
> ii. Is *the Defendant* estopped from claiming double rent?
>
> (c) Did *the Plaintiff* cause *the Defendant* loss of rent by renting beds to *New Tokyo Wall Decoration General Contractor ("*New Tokyo*")* at a lower rate? If so, what is the loss suffered by *the Defendant*?
>
> (d) Did *the Plaintiff* cause *the Defendant* loss of rent by failing to invoice and collect rent from *Doka Engineering*

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1 Notes of Evidence dated 27 July 2015 p 5, line 29.

2 Defendant's 1st WS at para 15.

> *Construction ("*Doka*")*? If so, what is the loss suffered by *the Defendant*?
>
> (e) Did *the Plaintiff* cause *the Defendant* loss of rent by failing to invoice and collect rent from other customers (such as *LV Automation Pte Ltd ("*LV Automation*")* … and *Chin Ping Contractor ("*Chin Ping*")*? If so, what is the loss suffered by *the Defendant*?
>
> [amendments added in italics]

4 The following facts (which are adopted and adapted from the Defendant's 1st WS) form the background to the trial before me (the abbreviations used in this statement of facts shall be adopted for my Grounds of Decision):

> 1. On 7 March 2005 *the Defendant* signed a Tenancy Agreement with the *Plaintiff's* directors, Mr Peh Peng Leng ("**Mr Peh**") and Mr Teo Peng Kwang ("**Mr Teo**") trading as Doka Dormitory Management for the 3rd and 4th floors of 2 Kampong Ampat Singapore ("**Premises**") for 2 years from 1 May 2005 to 30 April 2007 (the "**2005 Tenancy Agreement**") at $20,000 per month.
>
> 2. … Doka Dormitory Management did not pay any rent on the 2005 Tenancy Agreement from 1 May 2005 to 28 February 2007 amounting to $420,000.
>
> 3. In 2005, Mr Peh's partnership … undertook renovations to the Premises which took about 2-3 months.
>
> 4. On 14 February 2007, *the Defendant* signed a Tenancy Agreement with the *Plaintiff* for the Premises for 2 years from 1 March 2007 to 28 February 2009 at a monthly rent of $20,000 (the "**2007 Tenancy Agreement**").
>
> 5. On 13 May 2009, *the Defendant* signed a further Tenancy Agreement with *the Plaintiff* for the Premises for 2 years from 1 March 2009 to 28 February 2011 at the monthly rent of $22,000 (the "**2009 Tenancy Agreement**").
>
> …
>
> 7. On 28 Feb 2011 the 2009 Tenancy Agreement expired. The *Plaintiff* did not move out but remained at the Premises paying rent into *the Defendant's* account of $22,000 every month (save for March and July 2011 where the rent was paid directly to Mr Tan) until 31 May 2012.

> …
>
> 9. Between April and June 2012, *the Plaintiff* approached *the Defendant's managing director* Mr Tan Han Yong ("**Mr Tan**") to discuss a takeover of the dormitory with *the Plaintiff* providing management services for $8,000 per month.
>
> 10. On or about 18 June 2012, it was agreed between the parties that as of 1 June 2012, *the Defendant* would take over the dormitory.
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> …
>
> 12. On 8 September 2012, *the Plaintiff's* licence to operate a dormitory at the Premises expired and *the Defendant* became the licenced operator of the dormitory.
>
> 13. In *September 2012*, *the Defendant* terminated the services of *the Plaintiff* as managing agent of the dormitory and *in October 2012* engaged Victor Charles *("Mr Charles")* as the new manager.
>
> [amendments added in italics]

Issue 1: Sale of entire business or assets only

5 It is tempting for witnesses to angle their oral evidence in the most favourable light to suit their version of the case. But often the documentary evidence in a commercial case like the present offer a more reliable guide to the parties' intentions. To this I shall now turn.

6 It was not disputed that there was a lunch meeting on 18 June 2012 at Riverview Hotel, with Mr Teo, Mr Peh, Ms Ng Lei Kim ("Ms Ng") and Mr Tan present.[3] A record of that meeting was captured in a letter dated 25 June 2012 drafted by Mr Teo and hand-delivered by Ms Ng to Mr Tan.[4] It was entitled,

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[3] Mr Teo's AEIC at para 37; Ms Ng's AEIC at para 22; Plaintiff's 1st WS at para 47.

[4] Mr Teo's AEIC at para 45; Ms Ng's AEIC at para 23; Plaintiff's 1st WS at para 51.

"LETTER OF UNDERSTANDING/AGREEMENT" (hereinafter, "25 June Letter") and stated:[5]

> … To recapitulate and thereby set on records, the following items [1] to [5] had been duly accepted and agreed between Fu Loong Lithographer Pte Ltd [Fu Loong] and ISO Industry Pte Ltd [ISO]. The said agreement becomes operative with effect from 1/6/12.
>
> [1] Fu Loong had taken *full charge of the workers' dormitory*.
>
> All clients / rental income yield be transferred to Fu Loong.
>
> Cheque payment of rental income to be made payable to Fu Loong.
>
> Fu Loong will arrange to open bank account to facilitate deposit of cheques.
>
> …
>
> [4] Fu Loong will deal directly with ATI Architects Pte Ltd in conjunction to the renewal application for the continued of use of the premises as workers' dormitory.
>
> …
>
> [6] ISO had substantiated in detail to Fu Loong the *total investment cost*.
>
> ISO had proposed to Fu Loong a *"take over" cost* at the sum of S$150,000.00. In this connection, it will be well appreciated Fu Loong to confirm acceptance of the proposed sum …
>
> [emphasis added]

7 The 25 June Letter clearly supported the Plaintiff's case. The Defendant was taking over the entirety of the Plaintiff's dormitory business. There was no need to "set on records" the other details of the dormitory business if the agreement was just about the sale of the assets only. Paragraph 6 of the 25 June Letter even mentioned the "total investment cost" before the proposal for the "take over" at $150,000 (although Mr Tan denied that the Plaintiff had

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[5] Plaintiff's Bundle of Documents, p 255.

substantiated the cost to the Defendant).[6] I found that this was clearly not a note for the sale and purchase of the assets only, or as an extension of the Defendant's case, the sale of the Plaintiff's entire business for only the price of the assets.

8 There was another meeting between the same four persons on 13 August 2012 at the Riverview Hotel.[7] The minutes of this meeting ("Minutes of 13 August Meeting") recorded that:[8]

> [1] Mr Tan of Fu Loong has given full permission to ISO Industry Pte Ltd to appoint certified international valuer in order to obtain the valuation report for the purpose of *determining the value of the said workers' dormitory.*
>
> Mr Tan of Fu Loong
>
> - will pay the fee for the full valuation report
> - will accept the final valuation sum as assessed by the valuer as "Take Over" Fee due payable to ISO Industry Pte Ltd.
>
> At the material point of time, ISO Industry Pte Ltd has make known to Mr Tan of Fu Loong the "Take Over" Fee to be S$150,000.00 after factoring deprecation cost. …
>
> [emphasis added]

On its own, the minutes showed that it was clear as day that the parties' agreement was for the "Take Over" of the entire "workers' dormitory" business.

9 The Defendant however latched on to the "FOLLOW-UP OF THE MINUTES PER MEETING OF AUGUST 13, 2012" ("Follow-up Minutes")[9] wherein it was stated that the Plaintiff was tasked to appoint "certified

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6 Notes of Evidence dated 28 July 2015 p 17, line 1.

7 Mr Teo's AEIC at para 48.

8 Plaintiff's Bundle of Documents, p 256.

9 Plaintiff's Bundle of Documents, p 257.

international valuer to ascertain the value of the *pre-existing fixtures and fitting of the workers' dormitory* at 2 Kampong Ampat."[10] It will be recalled that Mr Tan had denied ever seeing or receiving these Follow-up Minutes, yet he chose to rely on them. Be that as it may, it was argued that the emphasised phrase showed that the agreement was for the Defendant to pay for the physical assets only.[11]

10 I found that the Follow-up Minutes should be understood in context together with the two preceding documents. The 25 June Letter[12] and Minutes of 13 August Meeting[13] had already made clear (see above) that the agreement was for the sale of the whole dormitory business (notwithstanding the absence of the words, [14] "sale of the business"). It was unfortunate that the Defendant had not given Mr Teo an opportunity during cross-examination to explain the specific mention of "pre-existing fixtures and fitting" (see Plaintiff's argument at para 12 of Plaintiff's 2nd WS). Giving the Defendant's argument such weight as it deserved, I did not find it persuasive. The first point was that the valuation of the entire business must necessarily include the "pre-existing fixtures and fitting" as a component of the business. More pertinently, since the thrust of paras 1 and 2 of the Follow-up Minutes was to highlight the Plaintiff's inability to find a valuer and that the ball was then in the Defendant's court, it was understandable that the Plaintiff was highlighting the fact that the two "*international* valuers" they (the Plaintiff) had approached were not in a

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10 Plaintiff's Bundle of Documents, p 257 at para 1.

11 Defendant's 1st WS at paras 31 and 32.

12 Plaintiff's Bundle of Documents, p 255.

13 Plaintiff's Bundle of Documents, p 256.

14 Defendant's 1st WS at para 34.

position to value the physical assets. Paragraph 2 of the Follow-up Minutes concluded (again) with the "'Take Over' fee", which was the common thread of all three documents and must mean the same thing.

11 Once more, like the preceding two documents, the ventilation of the other matters connected with the dormitory business reinforced my view that the "'Take Over' fee" at para 2 of the Follow-Up Minutes was for the entire business and not the physical assets only.

12 The Defendant submitted[15] that the documents[16] do not "set out that there was a sale of the business" and that the words "take over" in inverted commas "may not accurately describe the situation". I was of the considered view, after observing Mr Teo (who had drafted all three documents),[17] that he was not using the inverted commas to indicate that the "take over" was not what it said. If anything, it was intended to emphasise the situation of the Defendant assuming full control of the dormitory and the sale of the entire business.

13 In my judgment, the three documents[18] were tolerably clear as a signpost of the parties' intentions when examined against the factual matrix, including my findings with respect to the witnesses' credibility. I evaluated the evidence of Mr Teo, Mr Peh and Ms Ng about the agreement at the 18 June 2012 lunch meeting and found that despite cross-examination, the gist of their evidence that

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15 Defendant's 1st WS at para 34.

16 Plaintiff's Bundle of Documents, pp 255 to 257.

17 Plaintiff's Bundle of Documents, pp 255 to 257.

18 Plaintiff's Bundle of Documents, pp 255 to 257.

the agreement was for the sale of the entire business "remained intact": see para 48, and also para 47 of Plaintiff's 1st WS.

14 The bigger picture was that it did not make sense for a "certified international valuer" to be appointed if the agreement was, in Mr Tan's words, "to buy over the asset such as the scrap metals".[19] It was amazing that para 47 of the Defendant's 1st WS confirmed this fact by stating, "[t]he assets left behind by ISO and the entire dormitory were in very poor condition and could not be worth much." I agreed with the Plaintiff's submission[20] that the valuation was intended for the entire dormitory business, which was why this issue featured in the documentation and Mr Tan was even prepared to bear the fees for the valuation.[21]

15 Also, Mr Tan admitted that the figure of $150,000 had been mentioned at the meeting of 18 June 2012.[22] I found that if Mr Tan had regarded the assets as no more than "scrap metals",[23] he would have rejected the proposed amount of $150,000 outright. Yet this figure of $150,000 persisted throughout,[24] indicating that the parties clearly intended that the sale was of the entire dormitory business but reserved the exact price pending valuation.

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19 Notes of Evidence dated 28 July 2015 p 58, lines 1 to 7.

20 Plaintiff's 1st WS at paras 55 and 56.

21 Notes of Evidence dated 28 July 2015 p 54, line 25 and Plaintiff's Bundle of Documents, p 256.

22 Notes of Evidence dated 28 July 2015 p 16, lines 18 to 21 and Plaintiff's Bundle of Documents, p 255.

23 Plaintiff's 1st WS at para 56.

24 Plaintiff's Bundle of Documents, p 257 at para 2.

16 On Mr Tan's testimony, I found that he knew what was happening and what was involved in the deal. He was particularly evasive when the questions came near to whether he expected to get all the benefit of the contracts (with the existing 16 customers)[25] and the dormitory business without paying anything for them.[26] He took a long time to answer that he was getting the contracts for free because he knew that this would make his case untenable.

17 Mr Tan was also careful to distance himself from the documentation. He did not reply to the 25 June Letter;[27] at first he denied receiving it.[28] When he was asked whether he had "seen this document", he replied, "I've forgotten; *I've not seen this.*"[29] It was only when he was confronted with his lawyer's letter dated 18 June 2015 confirming that he had received the 25 June Letter that he confirmed that he had received the 25 June Letter.[30]

18 Regarding the Minutes of 13 August Meeting, when asked whether he had received them,[31] his answer was, "Well, I'm frequently not at home and my maid might have received this and *I don't know.*"[32] He was still "not sure" whether he received the minutes.[33]

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25 Notes of Evidence dated 28 July 2015 p 7, lines 15 to 17.

26 Notes of Evidence dated 28 July 2015 p 6, line 12 to p 13, line 3.

27 Plaintiff's 1st WS at para 53.

28 Notes of Evidence dated 28 July 2015 p 13, lines 23 to 26; Plaintiff's 1st WS at para 51.

29 Notes of Evidence dated 28 July 2015 p 13, line 24.

30 Notes of Evidence dated 28 July 2015 p 14, line 7.

31 Notes of Evidence dated 28 July 2015 p 17, lines 28 to 31.

32 Notes of Evidence dated 28 July 2015 p 17, line 30.

33 Notes of Evidence dated 28 July 2015 p 17, line 32 to p 18, line 5.

19 As for the Follow-up Minutes,[34] Mr Tan "did not see this document" and "had not received" it.[35] And his reply to Ms Ng's sending the two documents by registered post?[36] He stated that he had two houses.[37] I found that Mr Tan obviously knew that the documents were damaging to his case. Hence he blatantly denied receipt or knowledge of the documents.

20 I do not propose to deal with the Defendant's arguments at paras 16 to 30; 39 to 49 of the Defendant's 1st WS point by point. The arguments range over a wide field and at times did not distinguish between submissions based on evidence and hypothetical speculation based on the Defendant's theory of the case. An example of such speculation was the *quid pro quo* argument at para 46 of the Defendant's 1st WS: that the agreement was only for the sale of the assets because the Plaintiff wished to reciprocate the Defendant for the rent-free period from 2005 to 2007.[38]

21 I will analyse and answer the Defendant's key arguments in this way. In the main, they fell into two categories:

(a) The reasons for suggesting that the Defendant would not have bought the entire dormitory business; and

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34 Plaintiff's Bundle of Documents, p 257.

35 Notes of Evidence dated 28 July 2015 p 18, lines 10 to 17.

36 Plaintiff's Bundle of Documents, pp 260 and 261.

37 Notes of Evidence dated 28 July 2015 p 18, line 23.

38 Plaintiff's 2nd WS at para 18.

(b) Why would the Plaintiff give away the dormitory business for free and charge only for the physical assets?

22 As for the first category, the Defendant submitted that Mr Tan had plans to redevelop the entire building; he did not wish to renew the lease and he did not want the dormitory business.[39] It is clearer to see the other arguments as falling under the second category. The Defendant had launched into a rationalisation of why it made sense that the agreement was for the Defendant to buy the assets only.

23 The arguments in the first category ran up against a brick wall. The irrebuttable fact was that Mr Tan was persuaded and agreed to go into the dormitory business; he took over the Plaintiff's business, collected rent from the existing tenants and was still running a profitable business. The short answer to the arguments in the second category was that the question for the court's decision was what the parties had in fact intended and agreed to at the material time, and not what was possible, or rational, or even plausible by a process of *ex post facto* rationalisation. Some of the matters argued by the Defendant were not even in the parties' minds at the material time, or proved to be so.

24 Paragraphs 20 to 30 of Defendant's 1st WS aggregated the reasons under the second category and led to the neat reasoning process posited in para 27. But this was never the Defendant's case, nor did they adduce the necessary evidence to prove this theory or that the Plaintiff's representatives went through the reasoning process in para 27. It is sufficient for me to evaluate and answer two key planks in the Defendant's case, the reasoning of which will also deal

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[39] Defendant's 1st WS at paras 16 to 19.

with the other more minute arguments. The Defendant made much of (i) the reinstatement costs and (ii) the renewal of the Urban Redevelopment Authority ("URA") licence to operate the dormitory. Taking the Defendant's case at the highest, and assuming that the Plaintiff recognised these and other factors as their weaknesses, I found on the evidence that they did not lead to two broad conclusions which were critical to the Defendant's case.

25 First, it did not mean that the Plaintiff's bargaining position was so badly undercut that they could get no value for the business, or that the business was worthless. Even Mr Tan felt this way because he entertained the $150,000 proposal while awaiting the valuation, and gave the Plaintiff a management contract worth $8,000 per month. That also explained Mr Tan's palpable evasiveness about getting the existing rental contracts free.[40]

26 Second, from my assessment of the witnesses, Mr Teo and Mr Peh were commercial men obviously guarding their commercial interests. As hardnosed businessmen, they would of course want to avoid the disadvantages (for example, they would wish to save the reinstatement costs), but that did not mean that they were not trying to get the best deal in the circumstances, by whatever means possible. It was just ridiculous to suggest that they would let the more valuable parts (the goodwill, the contracts and other constituent elements) of the business go for free. In short, the Defendant's case fell flat because the Plaintiff was neither *unable* nor *unwilling* to negotiate hard to secure the best agreement in their interests.

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[40] Notes of Evidence dated 28 July 2015 p 6, line 12 to p 13, line 3.

27 To be fair to the Defendant, I had considered all their submissions (even when they were clearly counsel's rationalisation) from the perspective of showing that it was more probable that the parties' agreement was for the sale of the assets only. But in the end I was not persuaded at all.

Issue 2: Double rent

28 The Defendant's claim for double rent was specifically pleaded in paras 15 and 16 of the Defence and Counterclaim (Amendment No. 3) ("Defence and Counterclaim").[41] Reliance was placed on cl 2(27) of the 2009 Tenancy Agreement signed on 13 May 2009,[42] which read:

> If the Tenant continues to occupy the Demised Premises beyond the expiration or determination of the Term or fails to deliver vacant possession thereof to the Landlord after the expiration or determination of the Term, *with the Landlord's acquiescence but without any express agreement* between the Landlord and Tenant, the Tenant shall pay to the Landlord for every month or part thereof such holding over *double* the amount of the Rent and such holding over shall not constitute a rental of this Tenancy Agreement by operation of law or pursuant to the provisions of this Tenancy Agreement. During the period of any such holding over all other provisions of this Tenancy Agreement shall be and remain in effect. The provisions herein shall not be construed as the Landlord's consent for the Tenant to hold over after the expiration or determination of the Term.
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> [emphasis in original]

29 The Defendant had argued extensively on this issue[43] but many of the arguments fell away or were rejected by the court's finding of fact that at the

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41 Setting Down Bundle, p 23.

42 Defendant's 1st WS at paras 5 and 6, see original agreement in Defendant's Bundle of Documents, pp 53 to 54.

43 See Defendant's 1st WS at paras 50 to 71; Defendant's 2nd WS at paras 18 to 20; and Defendant's 3rd WS.

expiry of the 2009 Tenancy Agreement, the parties had expressly agreed to a monthly tenancy at the same monthly rent of $22,000 (as the 2009 Tenancy Agreement). The claim for double rent was therefore misconceived; and para 15 of the Reply and Defence to Counterclaim (Amendment No. 3) ("Reply and Defence to Counterclaim")[44] succeeded in this regard.

30 I shall now explain why I reached that determination.

31 To start off, it was telling that there was no formal *written* notice to the Plaintiff to vacate the premises, whether before or after the expiry of the 2009 Tenancy Agreement.[45] Mr Tan alleged that he had *orally* asked Mr Peh and Mr Teo to vacate and reminded them about the clause on double rent.[46] I was of the view that Mr Tan's evidence on this issue was clearly an afterthought. Even his own Affidavit of Evidence-in-Chief hinted at the truth (at para 10):

> … Instead they took me out to dinner and invited me to social events and to karaoke sessions with them. At that time our relationship was very good and because of their friendliness and outwardly generous gestures, I felt obliged to them and did not give them formal notice to vacate the Premises. …

32 I did not believe that the rosy relationship between the parties was something that would have prevented Mr Tan from enforcing his rights. If he had this issue in mind, and had even orally reminded the Plaintiff to vacate on pain of paying double rent, the situation would not have persisted for so long.

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44 Setting Down Bundle, p 44.

45 Notes of Evidence dated 28 July 2015 p 26, lines 10 to 12 and lines 18 to 21; Plaintiff's 1st WS at para 66.1.

46 Mr Tan's AEIC at paras 10 to 11.

33 I found that the real situation was that Mr Tan did not intend to take back possession at the expiry of the 2009 Tenancy Agreement and had agreed to allow the Plaintiff to remain as a tenant at the same rent until he reached a firm decision as to what to do with the premises. I have seen Mr Tan give evidence. He is not a man to *acquiesce* in silence. When he thought that the Plaintiff did not manage the dormitory business properly, he terminated their services "immediately"[47] (without formal notice of termination),[48] and withheld the management fees for September 2012.[49] Further, I agreed with the Plaintiff that Mr Tan portrayed himself as still agitated by the double rent issue during his testimony.[50] If this was the case, it was incredible that he allowed the *status quo* to continue between March 2011 and May 2012 and did nothing to claim double rent until proceedings started. I could not therefore believe that the Plaintiff was in possession for a period of 15 months without his express agreement. To try to characterise Mr Tan's behaviour as mere "acquiescence" is to engage in semantics.

34 On top of that, the Defendant accepted rent at $22,000 per month, *unconditionally* and *without any reservation* of their rights. This was *for the entire 15-month period* before the Plaintiff handed over possession when the Defendant took over the dormitory business pursuant to their agreement. The rent was either paid into the Defendant's account or collected by Mr Tan

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47 Defence and Counterclaim at para 18; para 36 of Mr Tan's AEIC.

48 Mr Teo's AEIC at para 57; Mr Peh's AEIC at para 41; Plaintiff's 1st WS at para 66.4.

49 Mr Tan's AEIC at para 36. The management fee for September 2012 was subsequently resolved: see Order of Court dated 28 October 2015 at para 5.2.

50 Plaintiff's 1st WS at para 66.6.

personally on two occasions.[51] Mr Tan even had lunch with the Plaintiff's representatives after collecting the cheques.[52]

35 I agreed with the Plaintiff's submission[53] that during the 15-month period, the parties' conduct was consistent with the existence of an agreement for a periodic tenancy. The Defendant was reimbursed for the sub-let fee collected by the Housing and Development Board[54] and the application for renewal of the URA permission to continue to operate the workers' dormitory was done with Mr Tan's "blessing".[55] The *status quo* had persisted. If Mr Tan had any misgivings about the Plaintiff's continued possession, he would have sought legal advice to enforce his rights. But he was perfectly happy with the situation, which in accordance with my finding and the law, had given rise to a monthly tenancy.

36 Beyond the 15-month period, Mr Tan did not mention the double rent issue after taking over the dormitory business in June 2012, and *even after* he sacked the Plaintiff as managing agent. I was driven to the inevitable conclusion that Mr Tan (despite his protestations to the contrary) never intended to claim double rent.

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51 Plaintiff's Bundle of Documents, pp 178 and 182; para 15 of Reply and Defence to Counterclaim (at p 44 of Setting Down Bundle).

52 Notes of Evidence dated 27 July 2015 p 19, lines 30 to 31 and p 74, lines 9 to 10; Notes of Evidence dated 28 July 2015 p 58, lines 29 to 31.

53 Para 66.5 of Plaintiff's 1st WS.

54 See for example, Plaintiff's Bundle of Documents, pp 171-173.

55 Notes of Evidence dated 27 July 2015 p 19, lines 1 to 8.

37 On cl 2(27) of the 2009 Tenancy Agreement, the Defendant submitted valiantly on the distinction between "acquiescence" and "express agreement". I can understand that there is an appreciable difference but on our facts, the conduct of the parties, like that in *Khng Thian Huat and another v Riduan bin Yusof and another* [2005] 1 SLR(R) 130, had unequivocally "acknowledged and accepted the existence of" (at [8]) the monthly tenancy. In finding that there was express agreement for the tenancy, I categorically rejected the proposition that the agreement must be in writing.[56]

38 Given my finding that at the expiry of the 2009 Tenancy Agreement, a new periodic tenancy had been created, *ie,* a monthly tenancy with rent at $22,000 per month, it was not necessary to consider the issue of promissory estoppel, *ie,* that the Defendant was estopped from relying on cl 2(27) of the 2009 Tenancy Agreement.

Miscellaneous issues

39 The remaining issues which arose from the Defendant's counterclaims related to the Plaintiff's management of the dormitory business for the Defendant. This was for a short period from 1 June 2012 to September 2012 when the Plaintiff's services were terminated by the Defendant.[57] Before dealing with the specific complaints in respect of specific entities (indicated in the abbreviated form in the headings), it bears reminding that the terms of the

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[56] Defendant's 1st WS at para 60.

[57] Mr Teo's AEIC at paras 56 to 57; Mr Tan's AEIC at para 36.

management contract were contained in a letter dated 24 May 2012.[58] The Plaintiff promised to carry out the following services:[59]

> 1. Issuing of sales invoices.
>
> 2. Preparing of payment vouchers to creditors
>
> (All cheque payments to creditors will be issue by Fu Loong Lithographer Pte Ltd)
>
> 3. Keeping records of receipts and payments …

40 As such, while the core functions (like the Plaintiff was bound to collect the rent from the workers and pay them over to the Defendant) could be sensibly implied, it was not for the court to write all the terms of the management contract for the parties.

New Tokyo

41 The Defendant claimed that:

(a) "in breach of the Plaintiff's duties as manager, the Plaintiff had, without the Defendant's consent, charged New Tokyo $155 per bed instead of the usual rate of $240 per bed";[60] and

(b) "[t]he Plaintiff had also undercharged New Tokyo for the number of beds taken up by them."[61] This claim was not pursued further.[62]

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58 Plaintiff's Bundle of Documents, p 254; Plaintiff's 1st WS at para 96.

59 Plaintiff's Bundle of Documents, p 254.

60 Para 19 of Defence and Counterclaim, found at p 25 of Setting Down Bundle.

61 Para 19 of Defence and Counterclaim, found at p 25 of Setting Down Bundle.

62 Para 34 of Defendant's 2nd WS.

42 The Defendant's claim herein can be answered briefly. To begin, it was not proved that the Plaintiff had any motive to benefit New Tokyo by giving them a discounted rate. Further, it was not challenged that Mr Teo had not been instructed by Mr Tan to increase the bed rate from what was previously charged ($155)[63] to $240 (which was the bed rate for the other workers).[64] It could not be assumed or implied that the Plaintiff was bound to check with Mr Tan and review every aspect of the business. If anything the converse was the position: the previous practice would prevail until changed by Mr Tan. Also, there were no terms in the management contract that imposed this obligation of checking and reviewing on the Plaintiff. The Defendant had also not pleaded, or proven, any implied term or fiduciary duty to this effect.[65]

43 Finally, I also noted that the sum of $23,123 paid over to the Defendant corresponded with the invoices issued to New Tokyo for the relevant months.[66] The Defendant simply failed to prove the loss.

Doka

44 The Defendant's case was that the Plaintiff failed to invoice Doka for the rental of the dormitory.[67] To be sure, the Defendant's case should have been specifically pleaded as being for a net amount of $5,025, which the Defendant

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63 Plaintiff's Bundle of Documents, p 308; Plaintiff's 1st WS at para 102.

64 Notes of Evidence dated 27 July 2015 p 48, line 12; para 97 of Plaintiff's 1st WS.

65 Paras 18 and 19 of Defence and Counterclaim (Setting Down Bundle, pp 24 to 25).

66 Defendant's Bundle of Documents, pp 150 and 174; see also para 20.1 of Reply and Defence to Counterclaim (Setting Down Bundle, p 46).

67 Para 19 of Defence and Counterclaim (p 25 of Setting Down Bundle); para 116 of Plaintiff's 1st WS.

said the Plaintiff owed them by not collecting the same amount as rent from Doka. This final amount was derived from the Plaintiff's records[68] and covered the rent payable by Doka for the period June 2012 *to November 2012*.[69]

45 I had no doubt dismissing this claim because Ms Ng had convincingly answered that Doka had at the same time "provided regular maintenance work and daily cleaning services"[70] and after setting off Doka's invoices (for such services) to the Defendant (for September 2012 and October 2012)[71] against the rent payable by Doka, the Defendant owed Doka $975.[72]

46 The Defendant then took issue with the work done by Doka, Mr Tan complaining that, "I do not know what works were done or whether any work was even done".[73] By the time of the written final submissions, the Defendant's complaint had evolved to there being no sub-contract between the Plaintiff and Doka.[74]

47 I found the Defendant's case to be disingenuous and rejected it. Agreeing with the Plaintiff's submissions at para 120 of the Plaintiff's 1st WS, and adopting the language of the arguments, my reasons were:

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68 Defendant's Bundle of Documents, p 105.

69 Mr Tan's AEIC at para 59; para 117 of Plaintiff's 1st WS.

70 Para 46 of Ms Ng's AEIC.

71 Defendant's Bundle of Documents, pp 200 and 203. See 2nd column of Defendant's Bundle of Documents, p 105.

72 Paras 46 and 47 of Ms Ng's AEIC and p 268 of Plaintiff's Bundle of Documents.

73 Para 44 of Mr Tan's AEIC; and also para 120 of Plaintiff's 1st WS.

74 Para 89 of Defendant's 1st WS.

(a) Mr Tan's answers during cross-examination[75] and the documentary evidence[76] showed that he had approved and paid Doka for its invoice for August 2012 whose description of work was identical to that in the September and October 2012 invoices;

(b) Mr Tan had signed a letter dated 16 November 2012 on the Defendant's behalf addressed to Doka where he informed Doka that its workers had "failed to perform their duties (clean the premises and do the laundry)";[77] and

(c) Mr Charles' testimony[78] under cross-examination that he had drafted the said letter of 16 November 2012 and that Doka's workers, prior to 16 November 2012 and since October 2012, had provided cleaning and laundry services at the dormitory.

48 To make a parting point: as the managing agent with the responsibility of preparing payment vouchers to creditors,[79] the Plaintiff was entitled – on the Defendant's pleaded case – to rely on Doka's invoices to the Defendant[80] and set off those amounts against the rent payable. Otherwise, the Plaintiff would be put in the invidious position of running a defence for Doka, and justifying Doka's work.

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75 Notes of Evidence dated 28 July 2015 pp 37 to 42.

76 Plaintiff's Bundle of Documents, pp 203 to 204.

77 Plaintiff's Supplementary Bundle of Documents, p 278.

78 Notes of Evidence dated 28 July 2015 p 66, lines 6 to 20.

79 See Plaintiff's Bundle of Documents, p 254.

80 Defendant's Bundle of Documents, pp 200 and 203.

Chin Ping

49 The Defendant's counterclaim here was that the Plaintiff failed to invoice or hand over monies collected from Chin Ping.[81] Essentially, the Defendant relied on the Plaintiff's "out Records" (Defendant's Bundle of Documents pp 91 and 92) which showed that six of Chin Ping's workers had been staying at the dormitory between 1 June 2012 and August 2012.[82] The total amount claimed under this head was $4,103.22.

50 I accepted the Plaintiff's case that the invoices were issued to and handled by Chin Kiat Construction Pte Ltd ("Chin Kiat") for Chin Ping (Paragraph 20A of Reply and Defence to Counterclaim).[83] The Plaintiff showed that Chin Kiat (tenant) and Chin Ping (non-tenant) shared the same address and had related owners (Tan Buck Yong and Tan Buck Hong).[84] Mr Teo explained that the practice was for one company to sign the tenancy agreement with the Plaintiff and the workers from their affiliated company will come under the same agreement, and be paid for by the first company.[85] Further, Mr Teo explained in his Affidavit of Evidence-in-Chief that the "out Records" showed the workers' company as *reflected in his work permit*, and not the company that signed the tenancy agreement.[86]

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81 Para 19A of Defence and Counterclaim (p 25 of Setting Down Bundle).

82 Para 95 of Defendant's 1st WS.

83 Found at pp 46 to 47 of Setting Down Bundle; para 75 of Plaintiff's 2nd WS.

84 Plaintiff's Bundle of Documents, pp 285 to 288 and pp 306 to 307.

85 Notes of Evidence dated 27 July 2015 p 44, lines 11 to 32 and para 66 of Mr Teo's AEIC.

86 Para 66 of Mr Teo's AEIC.

51 I found that the Defendant failed to prove their case in respect of the six workers under Chin Ping.

LV Automation

52 The counterclaim in respect of LV Automation boiled down to a claim for $596.13 for one worker who stayed in the dormitory from June 2012 to 15 August 2012.[87] The Defendant's 2nd WS at para 31 made it clear that they were relying on the Plaintiff's "out Records" as well. But there was a clear notation of "Gower" against the worker's name.[88] I accepted the Plaintiff's case (including the relationship between Gower Pte Ltd ("Gower") and LV Automation)[89] that the worker's rent was paid under Gower's account. The Defendant failed to show that the worker's rent was not paid to them.

Conclusion

53 In summary, my decision was as follows (the details were in the Order of Court dated 28 October 2015):

(a) I allowed the Plaintiff's main claim and found that the agreement between the parties was for the sale of the Plaintiff's entire dormitory business to the Defendant, with the value of the business to be separately assessed.

(b) I dismissed the Defendant's counterclaims concerning double rent, New Tokyo, Doka, Chin Ping and LV Automation.

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87 Defendant's 1st WS at para 101; Defence and Counterclaim at para 19A.

88 Defendant's Bundle of Documents, p 91.

89 Para 134 of Plaintiff's 1st WS.

Foo Chee Hock
Judicial Commissioner

Chia Foon Yeow (Loo & Partners LLP) for the Plaintiff;
Teh Ee-Von (Infinitus Law Corporation) for the Defendant.
