IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 60

Suit No 930 of 2018
(Registrar's Appeal No 320 of 2018)

Between

Wen Wen Food Trading Pte Ltd

… *Plaintiff*

And

Food Republic Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Pleadings] — [Striking out]
[Contract] — [Breach]
[Contract] — [Misrepresentation] — [Fraudulent]
[Contract] — [Contractual terms] — [Parol evidence rule]
[Contract] — [Contractual terms] — [Rules of construction]

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v
Food Republic Pte Ltd

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17, 27 December 2018

7 March 2019

Dedar Singh Gill JC:

Introduction

1 This was an appeal by the plaintiff, Wen Wen Food Trading Pte Ltd, against the decision of the Assistant Registrar ("AR") on 27 November 2018 to strike out the plaintiff's claim in its entirety pursuant to O 18 r 19(1)(b) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules").

2 I dismissed the plaintiff's appeal. I now set out the full grounds for my decision.

Facts

The parties

3 The plaintiff is a Singapore registered company incorporated on 6 May 2016.[1] Its principal business is the operation of food stalls. Ms Tan Elsie

("Elsie") is the sole shareholder and one of the directors of the plaintiff.

4 The defendant, Food Republic Pte Ltd, is a Singapore registered company and operates food-courts.

The plaintiff's case

5 Sometime in March 2014, Mr Alvin Ong Lye Hock ("Alvin"), the leasing manager of the defendant, met with Elsie and Mr Tan Boon Kiau ("Tan"), her business partner.[2] The defendant had successfully tendered to operate two food-courts located at Shaw Centre and ION Orchard.[3] Elsie and Tan were approached to take up stall licenses at the food-courts.

6 The defendant was responsible for the renovation and refurbishment of these food-courts and wanted prospective licensees to contribute towards the cost. The contribution expected for the Shaw Centre and ION Orchard food-courts was S$75,000.00/- and S$85,000.00/- respectively.[4] The plaintiff's evidence was that to justify the request for contributions, the defendant represented that the plaintiff could expect a six-year license period at the food-courts.[5]

7 Elsie and Tan accepted the defendant's proposal at [6] and on 26 March 2014, Tan signed a stall license booking form for the ION food-court ("booking form").[6] The booking form specified the license period to be "2 years".

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1 Ms Ruth Leong's ("Ruth") 1st Affidavit para 8, RL-1 pp 12-14.

2 Elsie's Affidavit para 5.

3 Elsie's Affidavit para 6.

4 Elsie Affidavit para 7.

5 Elsie's Affidavit para 9.

6 Elsie's Affidavit para 13, ET-1 p 11.

8 Separately, Elsie and Tan's business partnership, Wen Wen F&B Management, entered into a license agreement for the Shaw Centre food-court from 9 June 2014 to 8 June 2016.[7] This license agreement was novated to Elsie and Tan's company, Mei Yan Catering Pte Ltd ("MYCPL"), with effect from 1 November 2015.[8] Subsequently, the defendant and MYCPL entered into a second two-year agreement from 1 April 2016 to 31 May 2018.[9]

9 After Tan signed the booking form, there was a lapse of about two years before the ION food-court was ready for occupation and operation. Upon the completion of works, the defendant updated Elsie saying it was prepared to grant a license on the terms and conditions as agreed in the booking form. Having incorporated the plaintiff earlier that year, Elsie proposed the license be granted to the plaintiff. The defendant agreed to this.

10 On 27 October 2016, parties signed the ION food-stall license agreement ("License Agreement"), referencing the date of the booking form in the License Agreement's appendix.[10]

11 On 4 April 2018, the defendant sent a letter informing the plaintiff that the License Agreement was set to expire on 31 May 2018 and the defendant would not be renewing the same.[11] In a letter from its solicitors dated 24 May 2018, the plaintiff asserted that there had been a wrongful repudiation of the License Agreement.[12]

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7 Elsie's Affidavit para 18.

8 Elsie's Affidavit para 19, ET-1 pp 15-17.

9 Elsie's Affidavit para 21.

10 Elsie's Affidavit para 25, ET-1 p 61.

11 Ruth's 1st Affidavit para 23, RL-4 p 77-78.

12 Ruth's 1st Affidavit para 26, RL-5 pp 80-82.

12 The plaintiff's action is based on an allegation of misrepresentation and wrongful repudiation of the License Agreement. The plaintiff claimed that the defendant made a specific representation that the plaintiff would be able to operate in the defendant's food-court for a period of at least six years.[13] The plaintiff then relied on this representation when entering into the License Agreement. The plaintiff would not have contributed substantial sums for the renovation and refurbishment of the ION Orchard food-court had it only been promised a two-year license period.[14]

The defendant's case

13 In early 2014, Alvin had several discussions with Tan who had expressed interest in operating stalls at the Shaw Centre and ION Orchard food-courts.[15] Elsie was not present at any of these meetings and Alvin denies having ever met her.[16]After agreeing on the terms of the license, Tan signed the booking form on 26 March 2014. No mention was made in the booking form of any right of renewal upon the expiry of the two-year period. Tan did not inform the defendant that the booking form had been signed on behalf of Elsie and/or the plaintiff.[17] Subsequently, the plaintiff and the defendant signed the License Agreement on 27 October 2016. The Appendix to the License Agreement stated that the license period would be from "27 May 2016 to 31 May 2018 (2 years)".[18] Under the section titled "Option to Renew", it stated "NA" for "Not Applicable".

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13 Statement of Claim ("SOC") paras 5, 19; Elsie's Affidavit para 9; Ruth's 2nd Affidavit, RL-9 pp 9-10.

14 Elsie's Affidavit para 35.

15 Alvin's Affidavit paras 7-8.

16 Alvin's Affidavit paras 9, 12.

17 Alvin's Affidavit para 10.

18 Ruth's 1st Affidavit para 16.

14 The defendant argued that it did not, at any stage, represent that the license period would be for six years.[19] It asserted that as a matter of practice, it does not sign license agreements for terms of more than three years.[20] Further, the terms of the License Agreement, specifying a license period of two years, was accepted by the plaintiff.[21] There could not have been an operative representation and by extension, a repudiatory breach by the defendant.

Decision of the AR

15 The defendant applied for the plaintiff's action to be struck out. At the first instance, parties appeared before the AR. The AR found that even if the plaintiff could succeed in proving all the facts that it pleaded, it would not be entitled to the remedy it prayed for. Given that the License Agreement expressly provided for a two-year license period, the plaintiff could not have been induced by any misrepresentation as to the duration of the license. The AR therefore struck out the claim pursuant to O 18 r 19(1)(b) of the Rules on the ground that it was legally unsustainable and therefore "frivolous or vexatious".

Issue to be determined

16 The sole issue before me was whether the AR was correct in finding that the plaintiff's claim was "frivolous or vexatious".

The law under O 18 r 19(1)(b)

17 The law on what amounts to a "frivolous or vexatious" pleading for the purposes of O 18 r 19(1)(b) of the Rules is well established. The action must be

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19 Alvin's Affidavit paras 12-14.

20 Alvin's Affidavit para 15.

21 Ruth's 1st Affidavit para 20.

obviously frivolous or vexatious or *obviously* unsustainable. The Court of Appeal in *The "Bunga Melati 5*" [2012] 4 SLR 546 considered that a "plainly or obviously" unsustainable action would be one which is either legally or factually unsustainable (at [39]). The Court explained that to be legally or factually unsustainable, it should be clear from the outset that:

> (a) certain legal elements cannot be satisfied or there is an obvious legal defence and consequently, the plaintiff would not be entitled to the remedy sought; and/or
>
> (b) the factual basis of the claim is fanciful and entirely without substance.

Application to the facts

Primacy of the License Agreement

18 The focus of the AR's reasoning turned on the express wording in the License Agreement. Therefore, even if the plaintiff were to succeed in proving the existence of a representation by the defendant, it could not have been induced by it.[22]

19 The Court of Appeal in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley*") at [36] held that a plaintiff "would not ordinarily be held to be induced by a misrepresentation if the express contractual terms … contradict or correct the defendant's misrepresentation". As the Court explained, parties are bound by the terms of the contracts they sign, and must be taken to have actually read those contracts and discovered the falsity of any earlier representations, and "[t]o hold otherwise would undercut the basis of the

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22 Certified Transcript, 27 November 2018, p 5, lines 16-17.

conduct of commercial life" (at [36]). Applying the reasoning in *Broadley*, the plaintiff would be bound by the wording of the License Agreement.

20 I agreed with the AR's finding that the plaintiff's claim in misrepresentation was legally unsustainable. The plaintiff could not have relied on or been induced by a misrepresentation of a six-year license which directly contradicted the two-year period specified in the contract.

21 In addition, the License Agreement contained an entire agreement clause in cl 30.1 which provided:[23]

> The Stall Licensee acknowledges that this License Agreement contains the whole agreement between the parties and it has not relied upon any oral or written representation made to it by the Company, its employees or agents and has made its own independent investigations into all matters relevant to this License Agreement.

22 The Court of Appeal in *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee Wei*"), considered the extent to which an entire agreement clause would preclude reliance on an oral collateral contract. The Court examined the treatment of entire agreement clauses across several jurisdictions and concluded (at [35]–[36]):

> that an appropriately worded [clause] would be acknowledged and upheld if it clearly purports to deprive any pre-contractual or collateral agreement of legal effect… An entire agreement clause can therefore be… construed as denuding a collateral warranty of legal effect … and/or by rendering inadmissible extrinsic evidence which reveals terms inconsistent with those in the written contract…

23 The language in cl 30.1 clearly identifies the License Agreement as the only source of the parties' rights and obligations and prevents the plaintiff from contradicting the document with extrinsic evidence. It is therefore not open, on

[23] Elsie's Affidavit p 41.

this ground, for the plaintiff to argue that the license was for a period of six years.

24 It follows from the above that the defendant did not wrongfully repudiate the contract by choosing not to renew the plaintiff's license upon its expiry.

The applicability of ss 93 and 94 of the Evidence Act

25 I also found that ss 93 and 94 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") were applicable in the present case. The application of these sections achieves the same effect (*ie*, the finding that the plaintiff's claim is unsustainable) as the principles laid down in *Broadley* and *Lee Chee Wei*.

26 Sections 93 and 94 codify the common law parol evidence rule and provide that evidence of any oral agreement or statement generally shall not be admitted for the purpose of contradicting, varying, adding to, or subtracting from the terms of a written contract. The relevant extracts of the provisions are set out below:

> 93. When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.
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> 94. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:

> (a) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;
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> …
>
> (c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved…

Common law exception to the parol evidence rule

27 The plaintiff submitted that there was a need to resort to extrinsic evidence (*ie*, the defendant's oral representation) to establish the "factual matrix" surrounding the agreement, particularly given the scant detail in the booking form.[24] It primarily relied on the decision of the High Court in *China Insurance Co (Singapore) Pte Ltd v Liberty Insurance Pte Ltd (formerly known as Liberty Citystate Insurance Pte Ltd)* [2005] 2 SLR(R) 509 ("*China Insurance*"). The issue before the Court in *China Insurance* was whether the insurance policy issued by the plaintiff covered the same subject matter and risks as the policy issued by the defendant. In construing the documents, Andrew Phang Boon Leong JC (as he then was) found that the common law exceptions to the parol evidence rule remain applicable insofar as they are not inconsistent with the provisions of the EA (at [41]). He held that even where contractual documents are unambiguous, "any aid to construction which does not add to, vary or contradict the relevant documents ought to be permitted" (at [51]). This might include statements made in the course of negotiations which could amount to separate or collateral contracts. On the facts, Phang JC held the affidavit evidence to be admissible as it clarified the factual matrix and aided

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[24] Plaintiff's additional submissions ("PAS") filed 21 December 2018, para 35.

the court in construing the scope of the insurance policies.

28 I found the present case to be distinguishable from *China Insurance*. It is important to bear in mind that not every case of a contractual dispute requires the factual matrix surrounding the agreement to be examined. Ordinarily, parties are to be held bound by the agreements they enter into. Otherwise, the sanctity of a written contract setting out the terms the parties have agreed to will be severely undermined. The misrepresentation alleged by the plaintiff conflicts with the terms as set out in the booking form and License Agreement. There was also no option to renew the license period. Any reference to extrinsic evidence would therefore "contradict" these documents.

The exceptions under s 94 of the EA

29 I also found that none of the six exceptions under s 94 of the EA was applicable in this case. The plaintiff namely relied on ss 94(a) and (c). Dealing first with s 94(a), this proviso allows extrinsic evidence to prove facts which "would invalidate any document" or entitle the plaintiff to a "decree or order relating thereto". I distil the following points from Sudipto Sarkar & V. R. Manohar, *Sarkar's Law of Evidence: In India, Pakistan, Bangladesh, Burma & Ceylon* (Wadhwa and Company Nagpur, 16th Ed, 2007) at pp 1492, 1494:

(a) The rule in s 94 excluding parol evidence implies that the documents in which the terms are written, are valid documents.

(b) The use of the words "such as" in s 94(a), indicates that the proviso is illustrative and not exhaustive.

(c) The first part of s 94(a) lays down that "any fact may be proved which would invalidate any document". The facts which may be proved

must either show that the legal requisites for a valid agreement did not exist at all, that one of the parties did not give his free consent to it or that the document does not express what was really intended to be embodied.

(d) The second part of s 94(a) lays down that any fact may be proved that would "entitle any person to any decree or order relating thereto". This means that where a party is entitled to a decree or order for rectification of any written instrument, or rescission of contract, he is entitled to adduce oral evidence of those facts which would entitle him to a decree or order giving the relief.

(e) The distinction between the first part and the second part of s 94(a) is that the former refers to facts which would wholly invalidate a written document, whereas the latter refers to facts which necessitate some rectification in the terms of the document to express the real intention of the parties.

30 The plaintiff submitted that there was fraud on the part of the defendant.[25] However, it did not plead fraud or any other fact which would invalidate the License Agreement or entitle it to a decree relating thereto in its Statement of Claim ("SOC").[26] Therefore, the argument founded on s 94(a) fails on the launch pad.

31 Under s 94(c), a separate oral agreement constituting a condition precedent to the attaching of any obligation under a contract may be proved by means of extrinsic evidence. A condition precedent is found where a written

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25 PAS, para 50.

26 Defendant's further submissions filed 14 December 2018, para 8.

contract is agreed "not [to] take effect until the fulfilment of [that] certain condition" (*Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [19] ("*Latham Scott*")). To invoke s 94(c), the plaintiff would be required to demonstrate that a license period of six years was a condition precedent to the License Agreement.

32 It is trite law that a condition precedent cannot be implied in the face of clear and express provisions to the contrary (*Lee Chee Wei* at [17]). Moreover, the plaintiff did not plead in its SOC that there had been an oral agreement constituting a condition precedent. Under the "Particulars of Breach", it confined its claim to *representations* made by the defendant which *induced* the plaintiff to take up the contract.[27] More fundamentally, an oral agreement cannot be construed as a condition precedent where "the written agreement [has] already become binding and [has] been performed" (*Latham Scott* at [20]). It would be implausible to suggest that there had been a condition precedent in this case when the License Agreement had been performed in its entirety. As such, the plaintiff does not meet the requirements of s 94(c).

33 On this analysis, the plaintiff's affidavit evidence regarding the alleged misrepresentation would be inadmissible and the plaintiff's claim is liable to be struck out under O 18 r 19(1)(b) of the Rules for being factually unsustainable.

Conclusion

34 For the foregoing reasons, I found the plaintiff's claim to be legally and factually unsustainable and dismissed the appeal.

35 I ordered costs to be paid by the plaintiff to the defendant, fixed at

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27 SOC, para 22.

$4,500.00, inclusive of disbursements.

Dedar Singh Gill
Judicial Commissioner

Tan Yew Seng Alfred (Alfred Tan & Co)
for the plaintiff;
Ho Seng Giap (He Chengye), Adly Rizal bin Said and Lee Koon Foong, Adam Hariz (Tito Isaac & Co LLP)
for the defendant.
