IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 04

Suit No 132 of 2016 (Registrar's Appeal No 323 of 2016)

Between

Kim Seng Orchid Pte Ltd

… Plaintiff

And

Lim Kah Hin (trading as Yik Zhuan Orchid Garden)

… Defendant

GROUNDS OF DECISION

[Landlord and tenant] – [Subleases] – [Rights of sublessees] – [Renewal of sublease]

[Contract] – [Formation] – [Acceptance]

[Civil procedure] – [Summary judgment] – [Effect of counterclaim]

TABLE OF CONTENTS

Kim Seng Orchid Pte Ltd
v
Lim Kah Hin (trading as Yik Zhuan Orchid Garden)

[2017] SGHC 04

High Court — Suit No 132 of 2016 (Registrar's Appeal No 323 of 2016)
Chan Seng Onn J
3 October 2016

11 January 2017

Chan Seng Onn J:

Introduction

1 The plaintiff sub-leased part of its premises to the defendant. The sub-lease agreement contained a contractual mechanism for renewal or extension of the sub-lease. By the time the sub-lease expired, the defendant had not sought to trigger that mechanism. Instead, the defendant simply remained in occupation and began plying the plaintiff with cheques for purported payment of rental and property tax, none of which the plaintiff accepted or encashed. The plaintiff then commenced legal action to repossess the occupied premises and the defendant argued that it was entitled to continue in occupation because there was an implied agreement between the parties for a renewal of the sub-lease. The plaintiff sought and was granted summary judgment. I dismissed the defendant's appeal against the assistant registrar's decision.

2 One of the arguments raised by the defendant on appeal was that he should have been granted unconditional leave to defend in light of his subsisting counterclaim. This raised before me the issue of the proper approach to be taken to applications for summary judgment where the defendant has brought a counterclaim. Over the years, a number of principles have been outlined in the case law on various aspects of this overall inquiry. In these grounds, I seek to amalgamate and reconcile these principles and place them into a practical framework that may be useful in structuring the analysis.

3 The defendant has appealed against my decision and I now set out my grounds.

Facts

The parties

4 The plaintiff is a company which has the primary business activity of growing orchids and ornamental plants for sale.[1]

5 The defendant is a sole proprietor. He trades as Yik Zhuan Orchid Garden and is similarly in the business of growing orchids and ornamental plants for sale.[2]

The Premises

6 In 1999, the plaintiff entered into an agreement to lease 11 Lim Chu Kang Lane 6, Singapore 718927, which is located at Lot 1174X Mukim 12

---

1 Statement of Claim (Amendment No. 1) at [1].

2 Statement of Claim (Amendment No. 1) at [2].

("the Leased Premises"),[3] from the President of the Republic of Singapore. The lease period was for a period of 20 years commencing on 18 August 1991.[4]

7 The defendant subsequently became an occupier of about 20% of the Leased Premises.[5] I will refer to the portion of the Leased Premises occupied by the defendant as "the Sub-Leased Premises". In 2009, the plaintiff commenced Suit No 765 of 2010/G ("S 765/2010/G") against the defendant, seeking various relief including the recovery of Sub-Leased Premises from the defendant, on the basis that there was no valid or subsisting basis for the defendant to occupy the Sub-Leased Premises.[6]

8 On 20 December 2011, the plaintiff entered into a further lease agreement with the President of the Republic of Singapore in respect of the Leased Premises, with a lease period from 18 August 2011 to 31 December 2014.[7]

The Compromise Agreement

9 The dispute between the plaintiff and defendant in S 765/2010/G was settled with the entry of both parties into a sub-lease agreement on 23 May 2012.[8] The parties have referred to this sub-lease agreement as "the

---

3 Affidavit of Teo Boon Tiong dated 24 June 2016 at p 6.

4 Statement of Claim (Amendment No. 1) at [3(i)]; Affidavit of Teo Boon Tiong dated 24 June 2016 at pp 6-12.

5 Statement of Claim (Amendment No. 1) at [4].

6 Statement of Claim (Amendment No. 1) at [5].

7 Statement of Claim (Amendment No. 1) at [3(iii)]; Affidavit of Teo Boon Tiong dated 24 June 2016 at pp 25-31.

8 Statement of Claim (Amendment No. 1) at [6]; Affidavit of Teo Boon Tiong dated 2 August 2016 at pp 6-15.

Compromise Agreement" in their submissions and for convenience I will utilise the same reference. The Compromise Agreement is the central feature of the current dispute and it is accordingly necessary for me to describe its contents in some detail.

10 Under the Compromise Agreement, the plaintiff agreed to sub-lease the Sub-Leased Premises to the defendant. Clause 1 of the Compromise Agreement states:[9]

> 1. The Sub-Lease Agreement shall be effective as between the Parties from 23rd May 2012 to 31 December 2014, expressly subject to extension(s)/renewal(s) as are mutually agreed between the Lessee and Sub-Lessee. Nothing herein shall bind either of the parties to enter into a further Sub-Lease Agreement or any extension(s)/renewal(s) beyond 31 December 2014. Further, the Lessee is not under any obligation to renew the Lease between the Lessee and the Singapore Government or to grant any such lease to the Sub-Lessee.

As may be observed, cl 1 not only sets out the sub-lease period but also makes provision for the possible extension or renewal of the sub-lease.

11 Clause 5 places an obligation on the defendant as sub-lessee to pay 20% of the total sum payable by the plaintiff as sub-lessor to the Singapore Land Authority ("the SLA"), such total sum being the rental cost paid by the plaintiff as lessee of the Leased Premises to the SLA as lessor.[10]

12 Clause 6(b) sets out the requirements and procedure for renewal and extension of the sub-lease. The relevant portions of cl 6(b) read as follows:[11]

---

9 Affidavit of Teo Boon Tiong dated 2 August 2016 at p7.

10 Affidavit of Teo Boon Tiong dated 2 August 2016 at p8.

11 Affidavit of Teo Boon Tiong dated 2 August 2016 at pp11-12.

> **Renewal And Extension of The Lease and Sub-Lease Agreement with effect from 1st January 2015**
>
> b. Upon the request by the Sub-Lessee no later than 6 months before the expiry of the current extended Lease on 31 December 2014, the Sub-Lessee shall pay to the Lessee the sum of S$32,500.00 per annum being ex-gratia payments in addition to the sub-letting payments contingent upon the renewal or extension of the Lease and Sub-Lease beyond 31st December 2014, expressly subject to the mutual agreement of the parties:-
>
> …
>
> iii. The sum of S$32,500.00 shall be paid by the Sub-Lessee to the Lessee within seven (7) days of receipt of the approval from the Singapore Land Authority and or any other relevant authority for the time being empowered to approve the Sub-lease;
>
> iv. For each year of the Lease thereafter, the said sum of $32,500.00 per annum shall be paid by the Sub-Lessee to the Lessee directly on the 1st day of each year with expiry of the fresh lease;
>
> …

13 The Compromise Agreement is signed by one Yeo Bee Hua on behalf of the plaintiff and by the defendant himself.[12]

Dispute between the parties

14 The plaintiff entered into a further lease agreement with the Government of the Republic of Singapore on 29 December 2014, extending its lease of the Premises for 2 years and 6 months. The lease period commenced on 1 January 2015 and would end on 30 June 2017.[13]

---

12 Affidavit of Teo Boon Tiong dated 2 August 2016 at p15.

13 Statement of Claim (Amendment No. 1) at [3(iv)]; Affidavit of Teo Boon Tiong dated 24 June 2016 at pp 34-61.

15 The defendant did not vacate the Sub-Leased Premises following 31 December 2014. Between 29 December 2014 and 28 January 2015, the defendant sent the plaintiff the following four cheques:

(a) On 29 December 2014, a cheque for $2,469.38;

(b) On 12 January 2015, two cheques for $5,000 and $15,000 respectively; and

(c) On 28 January 2015, a cheque for $2,469.38.

The defendant claimed that these cheques were for "payment of monthly rent … and property tax" as well as for "3 months' rental deposit".[14] The plaintiff returned all four cheques to the defendant.[15]

16 According to the defendant, the plaintiff sent him a letter dated 10 February 2015 informing him that the plaintiff did not agree to a renewal of the sub-lease under the Compromise Agreement.[16]

17 Thereafter, further cheques were sent by the defendant to the plaintiff, purportedly for monthly payment of property tax at the rate of $2,469.38 per month (as the defendant alleges).[17] A total of 17 such cheques, each for the sum of $2,469.38, were submitted by the defendant from March 2015 to July

---

14 Defence and Counterclaim at [9(1)] and [9(2)].

15 Defence and Counterclaim at [9(2)].

16 Defence and Counterclaim at [10]; Defendant's written submissions dated 29 September 2016 at [115].

17 Defence and Counterclaim at [9(1)]; Affidavit of Lim Jie dated 8 July 2016 at [19(a)] on p4.

2016.[18] These 17 further cheques were not returned by the plaintiff to the defendant, but the plaintiff never encashed any of them.[19]

18 The plaintiff faxed the defendant monthly utilities bills in respect of the Sub-Leased Premises from January 2015 to May 2016.[20] Upon receipt of the utilities bills, the defendant issued cheques to the plaintiff for payment of those bills and the plaintiff would thereafter encash those cheques and issue handwritten receipts to the defendant acknowledging payment.[21] The defendant sent the plaintiff a total of 16 such cheques from January 2015 to May 2016, each for sums ranging from approximately $200 to $500.[22]

Legal proceedings

S 132/2016

19 On 5 February 2016, the plaintiff filed Suit No 132 of 2016 ("S 132/2016") against the defendant.

20 In brief, the plaintiff claimed that it had suffered loss and damage as a result of the defendant's continued wrongful occupation of the Sub-Leased Premises. It sought *inter alia* repossession of the Sub-Leased Premises, damages and mesne profits for the period of occupation of the Sub-Leased Premises by the defendant beyond 31 December 2014. The defendant denied

---

18 Defence and Counterclaim at [9(4)]; Affidavit of Lim Jie dated 8 July 2016 at [19(b)] on pp4-6.

19 Defence and Counterclaim at [9(3)]; Affidavit of Lim Jie dated 8 July 2016 at [19(d)] on p6.

20 Affidavit of Lim Jie dated 8 July 2016 at [19(a)] on pp6-7.

21 Affidavit of Lim Jie dated 8 July 2016 at [19(b)] on p7.

22 Affidavit of Lim Jie dated 8 July 2016 at [19(c)] on pp7-8.

that he was in wrongful occupation and filed a counterclaim, seeking by way of relief its "[c]ontinued occupation of the [Sub-Leased] Premises".[23]

Summary judgment

21 On 27 June 2016, the plaintiff filed Summons No 3127 of 2016 ("SUM 3127/2016"), which was an application for summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"). This was heard by an assistant registrar on 30 August 2016. The assistant registrar granted the plaintiff's application. At this juncture, it suffices for me to summarise the assistant registrar's decision. I will describe his findings and reasons in greater detail subsequently during my evaluation of the parties' submissions.

22 The assistant registrar began by observing that cl 6(b) of the Compromise Agreement provides the mechanism for the renewal of the sub-lease. He found, however, that the requirements set out in cl 6(b) were not satisfied. The defendant did not make the necessary request for renewal within 6 months from 31 December 2014, and failed to pay the plaintiff $32,500 in *ex gratia* payments. Further, there was no express mutual agreement between the parties as required under cl 6(b). The assistant registrar found that the plaintiff had proven a *prima facie* case against the defendant.

23 The assistant registrar went on to consider whether the defendant had a *bona fide* defence that raised triable issues of fact or law. He found that the defendant failed to satisfy the court that he had such a defence. The assistant registrar rejected the defendant's arguments that (i) there was an implied

---

[23] Defence and Counterclaim at [21].

agreement between the parties for the renewal of the sub-lease; (ii) the plaintiff was estopped from preventing the defendant's continued occupation of the Sub-Leased Premises; and (iii) the plaintiff was barred by the doctrine of laches from bringing its claim. Accordingly, he concluded that summary judgment should be entered in favour of the plaintiff, and gave an order in terms of the plaintiff's application with damages and mesne profits to be assessed.

RA 323/2016

24 Dissatisfied with the assistant registrar's decision, the defendant filed Registrar's Appeal No 323 of 2016 ("RA 323/2016"), which I heard on 3 October 2016. After considering the parties' submissions and evidence, I dismissed the defendant's appeal and ordered the defendant to pay the plaintiff costs of and incidental to the appeal, such costs fixed at $7,000 including disbursements.

25 The defendant has appealed against my decision. I will now explain my reasons. I will begin with a brief description of the parties' submissions.

The parties' submissions

The appellant's/defendant's submissions

26 The defendant had three primary arguments before the assistant registrar, which he also advanced before me in his appeal.

27 First, the defendant submitted that there was an implied agreement between the parties for the renewal of the sub-lease. The defendant averred that the plaintiff had "accept[ed] the Defendant's cheques for payment of

monthly rent and property tax".[24] The plaintiff had also "actively sent" the defendant monthly utilities bills which the defendant paid by way of cheque.[25] After encashing those cheques for payment of utilities bills, the plaintiff had then issued handwritten receipts to the defendant. The defendant argued that through these actions, the defendant had offered to renew the sub-lease and the plaintiff had impliedly accepted such an offer for renewal by its conduct.[26]

28 In the appeal, the defendant also referred me to the cases of *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 ("*Midlink*"), *Min Hong Auto Supply Pte Ltd v Loh Chun Seng and another* [1993] 1 SLR(R) 642 ("*Min Hong*"), and *Long Foo Yit and Another v Mobil Oil Singapore Pte Ltd* [1997] SGHC 323 ("*Long Foo Yit*"), which in his view supported his argument that there was such an implied agreement between the parties. The defendant urged me to find that the assistant registrar erred in concluding otherwise.

29 Second, the defendant submitted that the plaintiff was estopped from seeking to evict the defendant. Reliance was similarly placed on the fact that the plaintiff did not return the defendant's cheques sent between March 2015 and July 2016, purportedly for the latter's payment of rental and property tax, and that the plaintiff sent the defendant monthly utilities bills between January 2015 and May 2016.[27] The defendant suggested that these constituted representations by the plaintiff that created the defendant's expectation that "the Plaintiff would permit the Defendant to continue lawfully occupying the

24 Defendant's submissions dated 29 September 2016 at [36].

25 Defendant's submissions dated 29 September 2016 at [37].

26 Defendant's submissions dated 29 September 2016 at [86].

27 Defendant's submissions dated 29 September 2016 at [92].

[Sub-Leased] Premises without the threat of repossession (or the commencement of this Suit)".[28] The defendant claimed further that he had relied on these alleged representations, that it was reasonable for the defendant to have done so, and that the defendant had acted to its detriment in its reliance.[29] The assistant registrar erred in finding that the plaintiff had not made any representation to the defendant that it would allow the latter to continue occupying the Sub-Leased Premises.[30]

30 Third, the defendant suggested that the plaintiff had "inordinately and inexcusably delayed the initiation of [S 132/2016]" and that the plaintiff was accordingly barred from bringing its claim by virtue of the doctrine of laches or as a result of the plaintiff's acquiescence.[31] The assistant registrar had found that there had not been significant delay between the end of the sub-lease under the Compromise Agreement and the plaintiff's attempt to obtain vacant possession, and that accordingly the defendant could not avail itself of the defence of laches.

31 Finally, the defendant submitted that the assistant registrar should have granted unconditional leave to defend because the defendant had a *bona fide* counterclaim that arose out of the same subject matter as the plaintiff's action and that was connected with the grounds of defence.[32] The defendant relied *inter alia* on certain remarks made by Bingham LJ (as he then was) in the unreported English Court of Appeal decision of *United Overseas Limited v*

28 Defendant's submissions dated 29 September 2016 at [94].

29 Defendant's submissions dated 29 September 2016 at [100] and [101].

30 Defendant's submissions dated 29 September 2016 at [89].

31 Defendant's submissions dated 29 September 2016 at [109], [110], and [117].

32 Defendant's submissions dated 29 September 2016 at [23] and [24].

Peter Robinson Limited (trading as Top Shop) (Civil Division, 26 March 1991, unreported) ("*Top Shop*") in support of his argument. While this submission was not advanced before the assistant registrar, the assistant registrar had raised the matter for the parties' attention at the beginning of the hearing of SUM 3127/2016. The assistant registrar noted that the counterclaim was for an order that the defendant be entitled to continue to occupy the Sub-Leased Premises, and that this was the complete opposite of the relief that the plaintiff prayed for, *ie,* for possession of the Sub-Leased Premises. But the parties did not address the matter at any length and thus the assistant registrar decided to proceed to hear the application.[33]

32 Before me, the defendant also made various allegations about the conduct of the plaintiff in the proceedings. I did not consider there to be any merit in these claims and will explain my reasons below.

The respondent's/plaintiff's submissions

33 The plaintiff's response to the defendant's arguments centred on cll 1 and 6(b) of the Compromise Agreement. According to the plaintiff, these clauses set out the requirements that must be satisfied before any renewal or extension of the sub-lease can take place. The plaintiff argued that none of these requirements had been satisfied and that the defendant had proffered no explanation for why he had not taken any steps to satisfy those requirements.[34]

34 The plaintiff further emphasised that it returned the first four cheques sent by the defendant (see [15] above) and never banked in any of the cheques

---

[33] Assistant registrar's minutes of 30 August 2016 in SUM 3127/2016 at pp1 and 2.

[34] Plaintiff's submissions dated 30 September 2016 at [15].

that the defendant purported to submit for payment of monthly rent and property tax (see [17] above). The plaintiff also argued that it had not returned the cheques received subsequent to the first four cheques simply because it could not keep returning them every month.[35]

35 The plaintiff took the view that the defendant was keen to remain on the Sub-Leased Premises because the subletting payments that he had to make to the plaintiff were "a fraction of the market value" of his occupation.[36] The defendant intentionally omitted to take any action up to 30 June 2014, waited for the sub-lease to expire on 31 December 2014, and then continued to occupy the Sub-Leased Premises, "quietly hoping to stay on the premises as he has done so now, with the intent to entrap the plaintiff in the manner which he has now tried to, by sending cheque payments purportedly for the subletting fees".[37] As a result, the plaintiff lost and continued to "lose substantial amounts of monies by way of the difference between the market rental of the [Sub-Leased] Premises and the nominal amounts that the defendant [was] proffering to the plaintiff".[38]

Issues for determination

36 Before identifying the issues, I will begin with a brief word on the principles that are to be applied in determining whether it is appropriate to grant summary judgment. These principles are well-known and there was no dispute between the parties on them.

---

35 Plaintiff's submissions dated 30 September 2016 at [19].

36 Plaintiff's submissions dated 30 September 2016 at [28].

37 Plaintiff's submissions dated 30 September 2016 at [18].

38 Plaintiff's submissions dated 30 September 2016 at [31].

37 Under O 14 r 3(1) of the Rules of Court, the court may grant summary judgment if there is no issue or question in dispute which ought to be tried and there is no other reason why there ought to be a trial. As described by Vinodh Coomaraswamy J in *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43] and [44], the burden lies on the plaintiff to show that he has a *prima facie* case for summary judgment. If he fails to do so, then his application will be dismissed with costs consequences. But if he satisfies the court that he has such a case, then the defendant must establish that there is a fair or reasonable possibility that he has a real or *bona fide* defence. If the court finds that the defence is not credible after having regard to its consistency with contemporaneous documents, its inherent plausibility, and other compelling evidence, the court will not deprive the plaintiff of its entitlement to relief: *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25].

38 In my view, the following key issues arose for my determination:

(a) Whether the plaintiff had established a *prima facie* case that the defendant was not entitled to remain on the Sub-Leased Premises;

(b) Whether there was an implied agreement between the parties for the renewal of the sub-lease;

(c) Whether the plaintiff was estopped from seeking to repossess the Sub-Leased Premises from the defendant;

(d) Whether the plaintiff was barred by the doctrine of laches from bringing its claim; and

(e) Whether the defendant should be granted unconditional leave to defend because of his subsisting counterclaim.

Finally, I will explain my findings on the remaining arguments advanced by the defendant before me. I now turn to the abovementioned issues, which I will address *seriatim*.

Whether the plaintiff established a *prima facie* case

39 In my view, the plaintiff was able, on the basis of the Compromise Agreement, to establish a *prima facie* case that the defendant was not entitled to continue its occupation of the Sub-Leased Premises after 31 December 2014.

40 The relevant clauses of the Compromise Agreement are clearly worded, and indeed the defendant has not sought to advance any interpretation of those clauses that departs from their plain and natural meaning. Clause 1 (which I have set out at [10] above) begins by placing an explicit limit on the duration of the sub-lease. The sub-lease is to commence on 23 May 2012 and end on 31 December 2014. The only qualification to the end-date of 31 December 2014 is the existence of any mutual agreement between the parties on an extension or renewal of the sub-lease. Immediately after the qualification is stated, cl 1 then reiterates that nothing in the Compromise Agreement will bind either of the parties to enter into a further sub-lease agreement or any extensions or renewals beyond 31 December 2014. Even more specifically, cl 1 then goes on to state that the plaintiff is not under any obligation to grant a sub-lease to the defendant.

41 The immediate and incontrovertible impression that one obtains from a reading of cl 1 is that the parties intended *not* to renew or extend the sub-lease unless the parties reached a further agreement to the contrary. Without such a further agreement, the defendant would not be entitled to continue its occupation past the contractual expiry date of 31 December 2014.

42 I have set out the relevant portions of cl 6(b) at [12] above. In my view, the language of cl 6(b) is just as clear as that of cl 1. Clause 6(b) particularises the requirements that must be satisfied in order for any renewal or extension of the sub-lease to be effected. The main requirements are:

(a) The defendant, as sub-lessee, is to make a request to the plaintiff, as lessee, for such a renewal or extension;

(b) Such a request must be made no later than 6 months before the expiry of the Compromise Agreement on 31 December 2014. In other words, the defendant must make the request by 31 June 2014;

(c) The defendant must pay the plaintiff $32,500 per annum as *ex gratia* payments, in addition to the sub-letting payments; and

(d) The parties must mutually agree to the renewal or extension.

The remainder of cl 6(b) sets out further details concerning a renewal or extension of the sub-lease, such as the obligation of the plaintiff to take the necessary steps to obtain the necessary approval from the authorities, the obligation of the defendant to assist the plaintiff to obtain such approval, and the dates on which the defendant is to make the annual payment to the plaintiff of the sum of $32,500.

43 It is evident from the content, language and structure of cl 6(b) that the parties had carefully considered how any renewal or extension of the sub-lease was to be achieved. The steps to be taken and obligations undertaken by each party are clearly and meticulously itemised. I agreed with the plaintiff that the parties intended that compliance with the methodology in cl 6(b) was necessary if any renewal or extension of the sub-lease was sought.

44 Equally, I agreed with the plaintiff that none of the requirements in cl 6(b) had been satisfied. As the plaintiff explained:[39]

(a) The defendant had not made any request to the plaintiff for an extension of the sub-lease;

(b) Certainly no such request had been made by 30 June 2014;

(c) The defendant had not made any payment of the required *ex gratia* payment of $32,500 to the plaintiff; and

(d) There was no mutual agreement between the parties for a renewal or extension of the sub-lease.

45 It was undisputed that the defendant remained on the Sub-Leased Premises beyond the expiry of the Compromise Agreement on 31 December 2014. The defendant had not even attempted to satisfy any of the requirements set out in cl 6(b). For these reasons, I found that the plaintiff had succeeded in establishing a *prima facie* case, and that the assistant registrar had not erred in making the same finding.

---

[39] Plaintiff's submissions dated 30 September 2016 at [13].

Whether there was an implied agreement for the renewal of the sub-lease

46 As I have described at [27] and [28] above, the defendant contended that an agreement was to be implied by the parties' conduct. The defendant had impliedly made an offer for renewal of the sub-lease by submitting to the plaintiff cheques for payment of monthly rent, property tax, and utilities bills, and the plaintiff had in turn impliedly accepted the offer by accepting those cheques and issuing receipts to the defendant in respect of the utilities bills.

47 I had no hesitation in rejecting the defendant's submission that there was such an implied agreement. Quite the contrary, the plaintiff's conduct made it clear beyond doubt that it did not agree to renew the sub-lease. This was evident from the fact that the plaintiff returned the first four cheques for purported payment of rental and property tax to the defendant, and never encashed any of the cheques for purported payment of rental and property tax.

48 The defendant suggested that the plaintiff should not be allowed to "selectively accept only utilities payments but not rental and property tax payments" from the defendant, and claims that by requesting and accepting utilities payments, it had "committed itself to a sub-lease renewal".[40] This submission was utterly without merit. The defendant had not only continued to occupy the Sub-Leased Premises despite his complete failure even to attempt to trigger the renewal process in cl 6(b), but had also continued to use the utilities present on the Sub-Leased Premises, thereby racking up utilities bills. It was not at all unreasonable for the plaintiff to seek payment of those utilities bills from the defendant, given that the plaintiff would otherwise be out of pocket if it had to pay those bills itself. There was nothing to support the

[40] Defendant's submissions dated 29 September 2016 at [77].

defendant's suggestion that the plaintiff was seeking to "escape a properly-formed contract which turned out to be a bad bargain".[41] I agreed with the assistant registrar that the plaintiff's request for the defendant's payment of utilities bills provided no basis for the implication of an agreement.

49 Neither did I place any weight on the fact that the plaintiff did not return the defendant's cheques for the purported payment of rental and property tax between March 2015 and July 2016. The plaintiff made its intention clear by returning the first four cheques to the defendant. There was no obligation on the plaintiff to keep returning cheques that the defendant unilaterally chose to foist upon the plaintiff, and I did not infer any acceptance on the part of the plaintiff by its non-remittance of those cheques. The plain fact remained that the plaintiff never encashed any of those cheques.

50 The defendant referred me to three cases, which I have identified at [28] above. I will now explain why the defendant's reliance on those cases was misguided and did not assist its defence.

Midlink

51 In *Midlink*, the plaintiff leased several units in a mixed user complex to the defendant. Prior to the expiry of the leases, the parties entered into discussions for future lease arrangements. After those meetings, the plaintiff issued a credit note to the defendant, indicating a reduction in the rental deposit. The defendant received the note and accepted the benefit of the credit. The plaintiff then forwarded new tenancy agreements to the defendant for execution, reflecting the new rental, but the defendant did not sign any of

---

[41] Defendant's submissions dated 29 September 2016 at [78].

those agreements. The defendant, however, continued to duly and promptly pay the reduced rental charges upon receipt of the plaintiff's invoices, in accordance with the practice established during the earlier leases between the parties.

52 Subsequently, the defendant purported to issue the plaintiff a notice of termination of lease of two units. The plaintiff disputed the defendant's right to terminate the leases and contended that there was a contractual agreement between the parties for a two-year lease of the premises. The defendant thereafter refused to make further rental payments, and the plaintiff commenced proceedings seeking payment of outstanding rental.

53 V K Rajah JC (as he then was) agreed with the plaintiff and found (at [36]) that the parties had reached an oral agreement during a meeting on a two-year lease. The parties' conduct subsequent to that meeting was wholly consistent with reaching a new tenancy agreement. As a result of his finding that such an oral agreement existed, Rajah JC considered (at [47]) that there was strictly no need to consider the defendant's submission that its purported silence was neither acceptance nor unequivocal conduct, but nevertheless proceeded to examine and reject the submission.

54 Rajah JC began by observing (at [48] and [49]) the well-established principle that acceptance can be signified orally, in writing or by conduct, and that a contract may be concluded on the terms of even a draft agreement if the parties are perceived by their conduct to have acted on it, citing *Brogden v Metropolitan Railway Company* (1877) 2 App Cas 666 as an illustration of the latter principle. Rajah JC then went on to state:

50 It is also hornbook law that silence *per se* is equivocal and does not amount to a clear representation. In *Tacplas Property Services Pte Ltd v Lee Peter Michael* [2000] 1 SLR(R) 159 at [62], Chao Hick Tin JA, delivering the judgment of the Court of Appeal, observed:

> … Mere silence and inactivity *will not normally suffice*, and in the words of Robert Goff LJ in *The Leonidas D; Allied Marine Transport Ltd v Vale do Rio Doce Navegacao SA* [1985] 1 WLR 925 at 937 'it is difficult to imagine how silence and inaction can be anything but equivocal' (endorsed by this court in *Fook Gee Finance Co Ltd v Liu Cho Chit* [1998] 1 SLR(R) 385). [emphasis added]

This stands to reason. Silence is a midwife that may ultimately deliver a contractual offspring that is stillborn or live. Silence and implicit acceptance are not invariably antagonistic concepts. … Silence will usually be equivocal in unilateral contracts or arrangements; **in bilateral arrangements or negotiations on the other hand, there will usually never be *true* or *perfect* silence. In many such cases, while there may not be actual communication of acceptance, the parties' positive, negative or even neutral conduct can evince rejection, acceptance or even variation of an existing offer.**

51 To say that silence can *never* be unequivocal evidence of consent may be going too far: see *Cheshire, Fifoot & Furmston's Law of Contract: Second Singapore and Malaysia Edition* (1998) by Professor Andrew Phang Boon Leong at 112. **It is always a question of fact whether silent inactivity after an offer is made is tantamount to acceptance.** …

52 … In the final analysis, **the touchstone is whether, in the established matrix of circumstances, the conduct of the parties, objectively ascertained, supports the existence of a contract.** Reduced to its rudiments, it can be said that this is essentially an exercise in intuition. Legal intentions, whether articulated or unarticulated, should not be viewed in isolation but should be filtered through their factual prism. Silence, depending on whether it is conscious or unconscious, may also from time to time entail altogether disparate legal consequences.

[emphasis in italics in the original; emphasis in bold added]

55 Rajah JC found (at [55]) that the critical issue of rent for the new tenancy had been consensually agreed upon, and there was no real dispute on the terms of the new tenancy agreements. This was, in his view, a case where "execution of a lease by the tenant was no more than an incident of the performance of the agreement reached by the parties. … There was nothing more for the parties to do except to execute the lease" (citing Lim Teong Qwee JC in *Masa-Katsu Japanese Restaurant Pte Ltd v Amara Hotel Properties Pte Ltd* [1998] 2 SLR(R) 662 at [11] to [12]. Rajah JC concluded (at [57] and [58]) that the defendant's silence was a calculated attempt to exploit the unsigned tenancy agreements. The silence was not equivocal. In fact, the defendant had commenced a course of conduct by paying the adjusted rent and accepting the credit given by the adjusted deposit, maintaining all the outward manifestations of a new tenancy agreement.

56 In the present case, the defendant argued that the plaintiff had accepted the defendant's offer to renew the sub-lease by its conduct in accepting the defendant's cheques for payment of monthly rent and property tax.[42] The defendant argued in the alternative that there was "not silence *per se* in the present case", given that the plaintiff had actively sent the defendant monthly utilities bills and issued handwritten receipts to the defendant upon encashing the defendant's cheques for those bills.[43]

57 I rejected the defendant's principal and alternative arguments. I did not accept the principal argument because of my finding that the plaintiff did not accept the defendant's cheques for monthly rent and property tax, as I have

---

42 Defendant's submissions dated 29 September 2016 at [36].

43 Defendant's submissions dated 29 September 2016 at [37].

explained at [47] and [49] above. I did not accept the alternative argument because the plaintiff's conduct in requesting the defendant's payment of the utilities bills was not evidence of the plaintiff's consent to the renewal or extension of the sub-lease, as explained at [48] above. I did, however, agree that this was a case in which there was "not silence *per se*". There was no silence because the plaintiff actively rejected the defendant's occupation, by returning his first four cheques for purported payment of rent and property tax, by refusing to encash the other cheques sent, and by sending the defendant a letter dated 10 February 2015 informing the defendant that the plaintiff did not agree to renew the sublease (see [16] above).

58 *Midlink* involved the question of whether the occupier had accepted a further two-year lease. While Rajah JC found that there existed an oral agreement to this effect, he also found that the defendant had, by paying the adjusted rent and accepting the credit given by the adjusted deposit, manifested its acceptance of a further lease. In the present case, the question was whether the lessee had agreed to a renewal of the sub-lease with the sub-lessee. The plaintiff had not conducted itself in a manner even remotely akin to how the occupier in *Midlink* behaved. The plaintiff did not accept any monetary benefit that might evidence its agreement to a renewal. It expressly repudiated the defendant's attempts to effect payment of rent and property tax.

59 Another key point of distinction was that *Midlink* involved an agreement in which the critical issue of rent for the new tenancy had been consensually agreed upon, and there was "no real dispute" on the other terms of the agreement. In Rajah JC's determination, there was nothing more for the parties to do except to execute the lease. In the present case, however, it was far from evident that there existed such certainty in the terms of a renewed

sub-lease, if such renewal had indeed occurred. For instance, there is no indication in cl 6(b) or anywhere else in the Compromise Agreement on the issue of the duration of any such renewal or extension of the sub-lease. I would have expected, at minimum, for the defendant to attempt to satisfy me that there was sufficient certainty in the terms of a renewed sub-lease. But the defendant made no endeavour in this regard. During the hearing of RA 323/2016, I queried counsel for the defendant on how the defendant had arrived at the sums of $5,000 and $15,000 that the defendant purported to pay the plaintiff in his cheques of 12 January 2015 as rental (see [15(a)] above). The reason for my query to counsel was that I found it thoroughly unclear from the Compromise Agreement how the defendant derived those figures. Tellingly, counsel for the defendant was unable to assist, simply informing me that he did not know the basis on which the defendant determined the figures of $5,000 and $15,000. Counsel for the plaintiff similarly indicated that he was unaware how those figures were determined. In my view, this was strongly suggestive of the uncertainty of the terms of any renewal of the sub-lease, and was a compelling indication that the defendant not only unilaterally made up the existence of a mutual agreement on the renewal of the sub-lease, but also its terms.

60 To adopt the language of Rajah JC at [52] of his judgment (quoted at [54] above), I found that the conduct of the parties, objectively ascertained, and in the established matrix of circumstances, simply did not support the existence of a contract.

Min Hong

61 The defendant also referred me to *Min Hong*, a 1993 High Court decision of MPH Rubin JC (as he then was). The plaintiff was delivered an

option to purchase a property, such option having been duly executed by the defendants who were the owners of the property. The option stated that the last day for exercise of 16 June 1989. The plaintiff handed over a cheque for $20,000 to the defendants as consideration for the option on 16 May 1989. However, on 24 May 1989, the defendants returned the cheque to the plaintiff as the defendants were unwilling to proceed with the sale. The plaintiff did not agree to the cancellation of the option. It instructed its solicitors to return the cheque to the defendants, and went ahead with the exercise of the option on 30 May 1989 by signing the option and forwarding the defendants a cheque for $70,000. Eventually, the plaintiffs sued the defendants for damages for breach of contract.

62 One of the defendant's arguments was that the language of the option suggested that only payment by cash was acceptable. Rubin JC rejected the argument. He held (at [72]) that the correct position in law was that cheques once given ought to be treated as the equivalent of cash, and accepted (at [73]) the plaintiff's evidence that it was the usual practice amongst conveyancers in Singapore to use cheques as a mode of payment at the initial stages of the option for purchase of properties. Rubin JC further observed that the defendants had only raised their contention about the mode of payment midway through the hearing of the case, and went on to state the following:

> 75 Another noticeable feature in this case is the conduct of the defendants after receipt of the first cheque. The cheque for $20,000 was received by them on 16 May 1989. They consulted their solicitors on 17 May 1989. *The cheque was in their possession until 24 May 1989 when they decided to go back on the terms of the option. Why did they take more than a week to return that cheque? During that span of time could they not have presented the cheque for payment and obtained cash particularly when there was no hint or suggestion that the plaintiffs were unable to meet the cheque issued? It is not unreasonable to suppose the defendants could well have*

> *insisted on 16 May 1989 itself that cash be given to them yet they did not insist on the cash mode. In the circumstances the contention that cash was the mode and cheque was not what was desired appears specious.* It was further patent that the defence based on the sufficiency or validity of tender was conceived and put in place at the eleventh hour to support an otherwise crumbling edifice of the defendants' case.
>
> 76 As regards the subsequent payment of $70,000 by way of cheque, similar considerations do apply. In any event the exercise of the option was done more than two weeks before the deadline set out in the option and in the light of the stand taken by the defendants that the option was not a binding one, the issue whether the payment should be by cash is purely academic. *It is clear from the evidence that the plaintiffs were willing at all material times to fulfil their obligation and had the defendants insisted on a cashier's order they could have promptly made a demand to the plaintiffs but no such demand was made.*
>
> [emphasis added]

63 The defendant relied on the two paragraphs from Rubin JC's judgment quoted above, and sought to draw an analogy to the present case. The defendant's sending of cheques for rent and property tax from January 2015 to July 2016 suggested that the defendant was willing at all material times to fulfil its obligation.[44] The plaintiff's act of keeping the defendant's cheques for rent and property tax from March 2015 to July 2016 suggested that the plaintiff had "accepted the Defendant's performance of their side of the bargain, and [that] there was an agreement between the parties for the renewal of the sub-lease".[45]

64 In my view, *Min Hong* did not assist the defendant in any way. Rubin JC rejected the defendants' objection to the plaintiff's mode of payment (by way of cash instead of cheque) partly because he found the defendants'

---

44 Defendant's submissions dated 29 September 2016 at [70].

45 Defendant's submissions dated 29 September 2016 at [71].

alleged desire for cheque instead of cash to be "specious", given that the defendants held on the cheque for about eight days before returning it. I did not consider that there was any parallel between the defendants' behaviour in *Min Hong* and that of the plaintiff in the present case. Although the plaintiff kept the defendant's cheques for purported payment of rent and property tax from March 2015 to July 2016, this was only done after the plaintiff had explicitly repudiated the defendant's payment by returning the latter's first four cheques. And as I have repeatedly observed, the plaintiff never encashed any of those cheques. There was therefore no basis to say that the plaintiff's position, *ie*, that it never agreed to a renewal or extension of the sub-lease, was "specious" (unlike that of the defendants in *Min Hong*). The cases were not factually analogous.

Long Foo Yit

65 The third case that the defendant relied on was *Long Foo Yit*, a decision of Judith Prakash J (as she then was) in 1997. The plaintiffs brought a suit against Mobil Oil Singapore Pte Ltd ("Mobil"), seeking an order for specific performance of an alleged contract to renew a dealer licence agreement, under which the plaintiffs claimed to be entitled to continue operating a Mobil petrol service station for the next 15 years. According to the defendants, Mobil had agreed in a letter sent to the defendants to *inter alia* renew the dealer agreement for another 15 years. Prakash J found (at [41]), after a close reading of the relevant correspondence and a consideration of the surrounding circumstances, that Mobil had not made such an offer to the plaintiffs. Prakash J also considered (at [49]) that even if such an offer had been made, the plaintiffs had nevertheless not accepted that offer, whether by conduct or otherwise. Given that neither an offer nor an acceptance could be

discerned on the facts, Prakash J concluded that no contract came into existence between the parties for a 15 year dealership.

66 In his submissions before me, the defendant referred to Prakash J's statement at [42] of her judgment that "[w]hile an offer may be accepted by conduct, conduct will only amount to acceptance if it is clear that the act relied on was done by the offeree with the intention of accepting the offer".[46] The defendant then reiterated the same argument that he had made before me several times, *ie*, that the defendant had offered to renew the sub-lease by paying monthly rent and property tax, and the plaintiff had impliedly accepted such an offer by its conduct in keeping the cheques, sending monthly utilities bills to the defendant, and accepting the defendant's payment of the same.[47] I have explained my reasons for rejecting those submissions and need not reiterate them here. To paraphrase the words of Prakash J at [42] of her judgment, in the present case it was *not* at all clear that the conduct of the plaintiff relied on by the defendant in his submissions was done by the plaintiff with the intention of accepting the defendant's offer.

The One Suites

67 In granting the plaintiff's application for summary judgment, the assistant registrar relied in part on the decision of the Court of Appeal in *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] 3 SLR 695 ("*The One Suites*"). He referred to the Court of Appeal's remark at [23] that "it is axiomatic that an implied term *is subject to and cannot contradict* an express term of the contract" (emphasis in the original). The assistant registrar

---

46 Defendant's submissions dated 29 September 2016 at [84].

47 Defendant's submissions dated 29 September 2016 at [85] and [86].

reasoned that given that there is an express clause in cl 6(b) that sets out how an extension of the sub-lease should be obtained, it was not open to the defendant to try to circumvent the express clause by "trying to imply an entire agreement on the basis that it sent cheques to the Plaintiff or by paying for utilities it ha[d] consumed".[48]

68 The defendant argued before me that the assistant registrar "failed to appreciate that the payment of property tax and lease payments/payments for utilities were by themselves express terms", referring to cll 7(c) and (e) of the Compromise Agreement.[49] Clauses 7(c) and (e) read as follows:

> 7. The Sub-Lessee agrees with the Lessee as follows:-
>
> …
>
> c. To pay 20% of all taxes, rates, charges, assessments, outgoings and impositions whatsoever due to the Lessee which now are then or at any time thereafter during or in respect of the said term shall or may be charged, assessed or imposed upon the premise or any part thereof within fourteen (14) days from the date on which the relevant bills is received by the Sub-Lessee;
>
> …
>
> e. To pay proportionately all charges for the supply of water, gas, sanitation or electric light or power of the Sub-Lessee's premise at any time thereafter during the said term charged or imposed in respect of the said land and buildings thereon, within 30 days from the date on which the Sub-Lessee is informed by the Lessee;
>
> …

69 I found that the defendant's submission in this regard was founded on a misreading of cll 7(c) and (e). Clauses 7(c) and (e) are express terms

---

48 Assistant registrar's minutes of 30 August 2016 in SUM 3127/2016 at p 16.

49 Defendant's submissions dated 29 September 2016 at [41].

governing the obligations of the lessee *within a lessor-lessee relationship*; they are *not* express terms governing *the renewal or extension of the sub-lease agreement*. Although the defendant did not elaborate further in his submissions, if the thrust of the defendant's submission was that there was not an *implied* agreement but rather an *express* agreement then I did not see how cll 7(c) and (e) aided him, for the aforementioned reason. The decisive point, as I have explained at [40] to [44] above, was that the parties had set out very precise steps in cl 6(b) governing the renewal or extension of the sub-lease agreement. The defendant failed to provide me with any evidence that the parties intended to ignore or do away completely with the contractual mechanism detailed in cl 6(b).

Whether the plaintiff was estopped from seeking to repossess the Sub-Leased Premises

70 I have described the defendant's argument on estoppel at [29] above. In essence, the defendant suggested that the plaintiff was estopped from bringing its claim because it had made a representation to the defendant that it would permit the latter to continue occupation of the Sub-Leased Premises, and that the defendant had relied on this representation to its detriment by, *inter alia*, making payment of rent and property tax to the plaintiff, and deferring attempts to source for alternative premises of a similar size, condition and location for his business.

71 The assistant registrar found that the plaintiff had never represented to the defendant that it was willing to renew the sub-lease beyond 31 December 2014. The assistant registrar considered that the defendant was fully aware of this, and further observed that the plaintiff never encashed the cheques for the sub-lease payments or property tax. He went further to find that the plaintiff

was doing quite the opposite – it represented to the defendant that it was not agreeable to a renewal of the sub-lease.

72 In *Chiam Heng Luan and others v Chiam Heng Hsien and others* [2007] 4 SLR(R) 305 at [78], Prakash J set out a useful summary of the principles relating to proprietary estoppel as explained by Sundaresh Menon JC (as he then was) in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292:

> 78 The applicable legal principles relating to this area of the law were comprehensively reviewed by Sundaresh Menon JC in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [170]–[210]. They are, to summarise:
>
> (a) The three elements that must be shown to found an estoppel are representation, reliance and detriment.
>
> (b) For an estoppel concerning land, it must be shown that the landowner permitted the claimant to have, or encouraged him in his belief that he had, some right or interest in the land, and the claimant acted on this belief to his detriment.
>
> (c) The principle that underlies the remedy is unconscionability. Where land is concerned, the question is whether the landowner said or did something that led the claimant to take a certain course of action which renders it unconscionable not to estop the landowner from his earlier position.
>
> (d) Representation is a broad concept covering both direct statements and agreements as well as expectations that have been created or encouraged by the landowner but it does not allow the doctrine to be invoked where a party acts to his detriment in the *hope* that he will be given an interest in the land.
>
> [emphasis in the original]

73 I agreed with the findings of the assistant registrar and rejected the defendant's submission. I did not believe that the plaintiff permitted the defendant to have, or encouraged the defendant in his belief (if the defendant

did in fact possess such belief) that the defendant was entitled to continue his occupation of the Sub-Leased Premises. Rather, the plaintiff was explicit in its non-agreement for the renewal of the sub-lease. Given the plaintiff's clear and unambiguous expression of intent, I did not accept that the defendant was at any point led to believe that he was entitled to continue in occupation of the Sub-Leased Premises beyond 31 December 2014.

74 The indisputable fact remained that the defendant never did seek to trigger the process laid out in cl 6(b) of the Compromise Agreement. As the plaintiff observed,[50] the defendant simply sat back and did nothing by 30 June 2014, which was the cut-off date for the defendant to make a request for renewal, and thereafter similarly took no action up to the expiry of the sub-lease on 31 December 2014. He then commenced the practice of sending cheques to the plaintiff, purportedly for sub-letting fees, hoping that the plaintiff would accept and encash those cheques and therefore implicitly agree to a renewal of the sub-lease, or be estopped from denying that it agreed to a renewal. Accordingly, it lay ill in the defendant's mouth to suggest that the plaintiff acted unconscionably in representing that the defendant was entitled to continue his occupation on the Sub-Leased Premises. If there was any unconscionability to be found in this sorry sequence of events, I had no doubt that it lay in the conduct of the defendant.

Whether the plaintiff was barred by the doctrine of laches

75 In the recent Court of Appeal decision in *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 ("*Chng Weng Wah*"), the appellant and the respondent jointly invested in a company by purchasing shares. After the

[50] Plaintiff's submissions dated 30 September 2016 at [18].

parties fell out, the respondent commenced proceedings, seeking an account of the shares and the sales proceeds. The appellant claimed that all the respondent's shares had been sold and fully accounted for, and that he had paid the respondent the sales proceeds. The respondent argued that the appellant was still holding on to some of the shares on the respondent's behalf and that there was some uncertainty as to whether the respondent had been fully paid following the sale of his shares. One of the arguments advanced by the appellant was that the respondent was barred by the doctrine of laches from bringing its claim. The trial judge was not persuaded that the doctrine of laches should apply, because in his view the delay did not amount to acquiescence nor did it result in the appellant suffering prejudice.

76 The Court of Appeal described the doctrine of laches as follows:

> 44 The doctrine of laches has been summarised in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46] (and cited with approval by this court in *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 at [37]–[38] and *Dynasty Line Ltd v Sukamto Sia* [2014] 3 SLR 277 at [58]) as follows:
>
> > Laches is a doctrine of equity. It is properly invoked where essentially there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted (*Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207 at [23]; *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [32]). This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced (*Re Estate of Tan Kow Quee* at [38]). …

> It bears emphasising that, as was observed by Sundaresh Menon JC (as he then was) in *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [33], the basis for equitable intervention by way of the doctrine of laches is ultimately found in unconscionability. The inquiry should be approached in a broad manner, as opposed to trying to fit the circumstances of each case within the confines of a preconceived formula derived from earlier cases. The inquiry depends mainly on the particular facts of each case, and to that end, the citation of earlier case authorities with points of similarity will, in most circumstances, be of limited assistance. Finally, it is acknowledged that the defendant bears the burden of proving that the doctrine of laches applies.

On the facts of the case, the Court of Appeal disagreed with the trial judge. It noted (at [52]) that the respondent had commenced legal proceedings only after a significant delay of at least 10 years. The delay caused prejudice to the appellant by affecting the evidence available, especially in light of the fact that the nature of the transaction and the relationship between the parties meant that there was limited formal documentation available and the evidence would invariably involve the personal recollection of the parties: *Chng Weng Wah* at [54] and [55]. The Court noted (at [57]) that the relevant events had occurred almost 14 years ago, and that the parties would naturally have limited recollection of what happened then. It concluded (at [59]) that the delay in the commencement of legal proceedings had resulted in the loss of evidence, primarily the ability of the appellant to recall the events that had taken place, and that it was therefore unconscionable for the respondent to seek an account from the appellant after such an inordinate delay.

77 In the present case, the defendant submitted that the plaintiff had inordinately and inexcusably delayed the initiation of S 132/2016, "caus[ing] the Defendant to believe that the Plaintiff did not intend to make the claim herein or any claim against the Defendant, such that the Defendant acted to its prejudice".[51] The defendant suggested that the plaintiff had "stood by and did

nothing for a period of almost 2 months after the expiry of the Compromise Agreement before sending a letter of demand dated 10 February 2015, and commencing the present suit on 5 February 2016 (after a period of 14 months) when he filed his Writ of Summons".[52]

78 In my view, there was no merit to the defendant's argument. I did not see how a period of 2 months could in any way be construed as a "substantial lapse of time" so as to trigger the doctrine of laches. Even after the plaintiff's letter of 10 February 2015, the plaintiff continued to make its non-agreement to the renewal clear by refusing to encash any of the cheques sent by the defendant. I therefore disagreed that the defendant came under the impression that the plaintiff would not assert its rights. Nothing the plaintiff did would cause the defendant to come under such an impression. Certainly this was not a case where (as it was in *Chng Weng Wah*) the length of the delay was such that prejudice was caused to the defence due to deterioration of the evidence. Thus I did not think that that any injustice would be caused if the plaintiff were permitted to bring its claim against the defendant. For the same reasons, I rejected the defendant's submission that there was acquiescence on the part of the plaintiff that now prevented the plaintiff from bringing its suit against the defendant.[53]

---

51 Defendant's submissions dated 28 September 2016 at [110].

52 Defendant's submissions dated 28 September 2016 at [115].

53 Defendant's submissions dated 28 September 2016 at [117].

Whether the defendant should be granted unconditional leave to defend on the basis of its counterclaim

The defendant's submission

79 As I described at [31] above, the defendant argued that he had set up a *bona fide* counterclaim arising out of the same subject-matter as the action and which was connected with the grounds of defence. On this basis, he submitted that he should have been granted unconditional leave to defend. His alternative argument was that he had set up a plausible counterclaim for an amount no less than the plaintiff's claim, and therefore should have been granted a stay of execution pending the determination of his counterclaim. The defendant placed strong reliance on the dicta of Bingham LJ in *Top Shop*.

The law

Top Shop

80 In *Hawley & Hazel Chemical Co (S) Pte Ltd v Szu Ming Trading Pte Ltd* [2008] SGHC 13 ("*Hawley*"), Lai Siu Chiu J described *Top Shop* and set out Bingham LJ's *dicta* at [32] and [33] of her judgment. I gratefully reproduce those paragraphs here:

> 32 … In [*Top Shop*], the plaintiffs appealed against the Master's refusal to give the company summary judgment on their claim (for non-delivery of goods by the defendants) but instead granted the defendants unconditional leave to defend. The plaintiffs contended that the Master should at least have granted summary judgment with a stay, pending trial of the defendant's counterclaim. The plaintiffs' claim was for the return of £201,135 it had paid the defendants plus £100,000 damages for loss of profits arising from the non-delivery while the defendants' counterclaim was for £110,900 for the goods rejected by the plaintiffs plus storage charges of £54,600 for the same (and continuing at the rate of £7,000 odd per month).

> 33 In delivering the judgment of the appellate court, Bingham LJ elaborated on what was set out in the UK White Book (1991) (at pp 152 and 153) on the four classes of cases in the court's determination of whether summary judgment should or should not be granted:
>
> > (a) The first class would be where the defendant can show an arguable set-off whether equitable or otherwise. To the extent of such set-off, the defendant would be entitled to unconditional leave to defend. It would be for the judge to decide whether such an arguable set-off is shown or not.
> >
> > (b) The second class would be where the defendant sets up a bona fide counterclaim arising out of the same subject-matter as the action and connected with the grounds of defence. In this class of case, according to the White Book, the order should not be for judgment on the claim subject to a stay of execution pending trial of the counterclaim, but should be for unconditional leave to defend even if the defendant admits the whole or part of the claim.
> >
> > (c) The third class would be where the defendant has no defence to the plaintiff's claim so that the plaintiff should not be put to the trouble and expense of proving it, but the defendant sets up a plausible counterclaim for an amount not less than the plaintiff's claim. In such a case, the order should not be for leave to defend, but should be for judgment for the plaintiff on the claim and costs until the trial of the counterclaim.
> >
> > (d) The fourth class would be where the counterclaim arises out of quite a separate and distinct transaction, or is wholly foreign to the claim, or there is no connection between the claim and the counterclaim. The proper order should then be for judgment for the plaintiff with costs without a stay pending the trial of the counterclaim.

The four classes of cases that Bingham LJ described in *Top Shop* have been adopted in a number of decisions of the Singapore courts. The defendant has referred me to several of these decisions, which I will describe in turn. I begin with *Hawley*.

Hawley

81 In *Hawley*, the plaintiff commenced an action against the defendant for unpaid sums relating to goods that it had sold and delivered to the defendant. The defendant in turn counterclaimed that the plaintiff had induced the defendant to continue with distributorship of the products by representing that it would prevent parallel imports and sales of the goods into Singapore, but that the plaintiff had failed to do so. The plaintiff filed an application for summary judgment on its claim, and while the defendant did not dispute the claim, it responded that it was entitled to unconditional leave to defend because it had a *bona fide* counterclaim which acted as a set-off against the claim. The plaintiff argued that its claim fell into the third or fourth of the *Top Shop* classes and that summary judgment should therefore be granted.

82 Lai J held that the claim fell within the third class. She referred to the decision of the Court of Appeal in *Cheng Poh Building Construction Pte Ltd v First City Builders Pte Ltd* [2003] 2 SLR 170 ("*Cheng Poh*"). In *Cheng Poh*, the Court of Appeal held (at [11]) that where claims and counterclaims arise out of the same transaction, and while the claims are admitted and the counterclaims are disputed, then so long as the counterclaims are plausible, the correct order to make would be that while judgment should be entered in respect of the claims, it should be stayed pending trial of the counterclaims. But where a counterclaim does not arise out of the same transaction or is not connected with the transaction, then special circumstances must be shown for there to be a stay of execution: *Cheng Poh* at [18]. The Court of Appeal cited with approval the following passage in *The Supreme Court Practice* (1999 Ed) (which is also found in *Singapore Civil Procedure 2016* vol 1 (Foo Chee Hock

gen ed) (Sweet & Maxwell, 2016) ("*Singapore Civil Procedure 2016*") at para 14/4/10):

> If, however, the counterclaim arises out of quite a separate and distinct transaction or it is wholly foreign to the claim or there is no connection between the claim and the counterclaim, the proper order should be for judgment for the plaintiff with costs without a stay pending the trial of the counterclaim.

The Court of Appeal in *Cheng Poh* did not refer to *Top Shop*.

83 After an examination of the merits of the counterclaim and whether it operated as a set-off to the plaintiff's claim, Lai J found that the defendant's case did not fall under the first or second class such as to merit unconditional leave to defend. The plaintiff should not be put to the trouble and expense of proving a claim that the defendant had never disputed. Although Lai J took the view that there were grave doubts as to the merits of the counterclaim, she granted a stay to enable the defendant to proceed to trial on its counterclaim.

Tru-line

84 In *United Overseas Bank Pte Ltd v Tru-line Beauty Consultants Pte Ltd and others* [2010] 2 SLR 590 ("*Tru-line*"), the bank sued the borrower and its guarantors for failure to repay sums due under certain banking facilities granted by the bank. The defendants did not dispute the amount owing to the bank, nor did they dispute that they had received the bank's letters of demand. The defendants filed a counterclaim alongside their defence, claiming that the bank had wrongfully terminated a letter of credit that it had issued to the borrower in favour of a third party, and that this had caused the third party to decide not to renew or extend the borrower's exclusive distribution agreement with the third party, thereby occasioning loss to the borrower.

85 The bank sought summary judgment of its claim and this was granted by the assistant registrar, despite the defendants' argument that they had a valid counterclaim against the bank for its failure to honour the letter of credit and that the counterclaim might be set-off against the claim. The defendants had argued that summary judgment should not be granted, or if judgment was granted then it should be stayed.

86 Woo Bih Li J dismissed the defendants' appeal in this regard. Woo J referred (at [41]) to Bingham LJ's *Top Shop* categories and noted that the categories had been adopted and applied in *Hawley*. Woo J referred also to the English Court of Appeal judgment in *Bim Kemi AB v Blackburn Chemicals Ltd* [2001] 2 Lloyd's Rep 93 (cited in the decision of Sundaresh Menon JC (as he then was) in *Abdul Salam Asanaru Pillai v Nomanbhoy (trading as South Kerala Cashew Exporters) & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [26(d)]) where Potter LJ summarised the principles pertaining to equitable set-off.

87 Woo J held (at [44]) that, on the facts, although the borrower's counterclaim was in respect of the bank's cancellation of the letter of credit and the letter of credit was issued pursuant to one of the banking facilities that formed the basis of the bank's claim, this did not give rise to a sufficient degree of proximity to raise a set-off. The claim by the bank did not include any sum in respect of the letter of credit and thus the counterclaim was separate from the claim. Woo J also found that this was a case where the bank "should not be put to the trouble and expense of proving its claim" since its claim was admitted. He therefore granted summary judgment in favour of the bank. Unlike in *Hawley*, the court declined to order a stay of execution on the judgment because he did not consider there to be a sufficient degree of

connection between the claim and counterclaim, and took the view that the counterclaim was suspect and possibly fraudulent.

Nanyang

88 Unlike *Hawley* and *Tru-line*, the case of *Nanyang Law LLC v Alphomega Research Group Ltd* [2010] 3 SLR 914 ("*Nanyang*") did not involve an application for summary judgment. A law firm commenced an action against a former client to recover sums owed to the firm for work done. The client did not enter an appearance in respect of the writ and therefore the law firm obtained judgment in default of appearance. The client applied to set aside the default judgment, *inter alia* on the basis of the merits of its defence against the law firm's claim, but the application was dismissed by an assistant registrar.

89 Andrew Ang J allowed the appeal, finding (at [17]) that the client had a *prima facie* defence. This was a defence of set-off based on money had and received by the law firm. It had been found in a separate suit that monies had been inappropriately paid out of the client's funds to the law firm for services that the law firm rendered to the client's directors in their personal capacities. Ang J took the view that the client had an arguable claim for money had and received and that the debt satisfied the requirements of a legal set-off or possibly an equitable set-off. Ang J then relied on Bingham LJ's *dicta* in *Top Shop* and *Hawley*, and held (at [25]) that the client had an arguable defence of set-off and that this was therefore a situation within the first of the *Top Shop* classes. Ang J then set aside the default judgment, reasoning (at [29]) that the justice of the case required that the client be allowed an opportunity to be heard on its defence.

Invar

90 The plaintiffs in *Invar Realty Pte Ltd v Kenzo Tange Urtec Inc & Anor* [1990] 3 MLJ 388 were the developers of a commercial building. They sued the architects and the civil and structural engineers for breach of contract and negligence. The engineers entered a counterclaim against the developers alongside their defence, seeking payment of the balance of the professional fees due to them from the developers. In their defence to the counterclaim, the developers admitted that they owed the professional fees, but contested the total amount that was due and further argued that they were entitled to set-off the amount in the counterclaim against their own claim against the engineers. The engineers then applied for and obtained summary judgment from an assistant registrar for the amount of the counterclaim admitted by the developers to be the professional fees owed to the engineers, with a stay of execution pending trial of the developers' claim and with leave to the developers to defend the balance sum of the counterclaim. The developers appealed against the assistant registrar's decision to a High Court judge in chambers.

91 Yong Pung How J (as he then was) referred to the principle established in *Sheppards & Co v Wilkinson & Jarvis* [1889] 6 TLR 13 ("*Sheppards*"), that where there is clearly no defence to the plaintiffs' claim but the defendants set up a plausible counterclaim for an amount not less than the plaintiffs' claim, the plaintiffs should not be put to the trouble and expense of proving their claim. The order in such a case should not be leave to the defendants to defend, but should be for judgment for the plaintiffs on the claim with costs, with a stay of execution until trial of the defendants' counterclaim, pending further order. I set out Yong J's further description of *Sheppards*:

> The Court of Appeal in *Sheppards v Wilkinson* recognized that a counterclaim may be used by a party as a defence to a claim in certain instances. The court stated that *a defendant ought not to be shut out from defending unless it was very clear indeed that he had no case in the action under discussion*. There might be either a defence to the claim which was plausible or there might be a counterclaim pure and simple. To shut out such a counterclaim would be an autocratic and violent use of O 14. The court had no power to try such a counterclaim on such an application, but, *if they thought it so far plausible that it was not unreasonably possible for it to succeed if brought to trial, it ought not to be excluded*. If the counterclaim was for a less sum than that claimed, then judgment might be signed, if there was no real defence, for so much of the amount of the claim as was not covered by the counterclaim. But if the counterclaim overtopped the claim and was really plausible, then the rule which had been often acted upon at chambers, of allowing the defendants to defend without conditions, was the right one. There were however circumstances which might call on the court to act differently. *If it was clear that the claim must succeed and there was really no defence to it, and the plaintiffs would only be put to expense in proving their claim, then there ought to be judgment on the claim, but the matter must be so dealt with that the defendants who had a plausible counterclaim must not be injured; and that would be done by staying execution on the judgment until the counterclaim had been tried*.
>
> [emphasis added]

92 On the facts, Yong J found that the engineers were entitled to judgment on their counterclaim with a stay of execution, given that the developers had admitted that they owed payment under the counterclaim to the engineers. Yong J therefore dismissed the appeal.

P H Grace

93 In *P H Grace Pte Ltd and others v American Express International Banking Corp* [1985–1986] SLR(R) 979 ("*P H Grace*"), the plaintiff bankers sought recovery of monies lent to their customer, the first defendant. The remaining defendants were the guarantors of the loan. The plaintiffs applied

for summary judgment and the application was granted by an assistant registrar. On appeal to a judge in chambers, the first defendant argued that it had a counterclaim against the plaintiffs for breach of contract and should accordingly be given unconditional leave to defend. The judge dismissed the appeal but granted the first defendant leave to proceed with the counterclaim against the plaintiffs. The judge refused to grant a stay of execution on the judgment pending the determination of the counterclaim.

94 On appeal to the Court of Appeal, the defendants argued that the first defendant had a *bona fide* counterclaim against the plaintiffs for damages for breach of contract and they should accordingly be given unconditional leave to defend. In the alternative, in view of the *bona fide* counterclaim, a stay of execution on the judgment should be granted until the determination of the counterclaim. L P Thean J (as he then was) referred (at [5]) to *Sheppards* as authority for the principles on whether summary judgment should be granted to the plaintiff where a counterclaim has been raised by the defendant, and if such judgment is given whether execution thereon should be stayed.

95 Thean J explained (at [6]) that the first step under *Sheppards* is to determine "whether it is 'not unreasonably possible' for the counterclaim of the…defendant to succeed if brought to trial". At this stage, the court does not inquire into the merits of the counterclaim; "the only point for consideration is whether it is a *bona fide* claim". On the merits, Thean J found that it could not reasonably be said that there was no prospect of the defendants' counterclaim succeeding if it was brought to trial and held that the counterclaim was, in the court's opinion, "a *bona fide* counterclaim". However, given that the first defendant did not dispute the amount owed to the plaintiffs, the plaintiffs

should not be put to expense in proving their claim and therefore the judgment obtained should remain undisturbed: *P H Grace* at [8].

96 On the issue of whether execution on the judgment should be stayed until the counterclaim was determined, Thean J held that since the first defendant's counterclaim was a *bona fide* one, a stay of execution ought to be granted in respect of the first defendant. However, given that the first defendant had since been wound up, it became unnecessary for the Court of Appeal to grant a stay.

A practical framework

97 In my view, the following principles can be gleaned from the case law on the proper approach to be taken when determining whether summary judgment ought to be ordered where there is a subsisting counterclaim. It is useful to try to amalgamate and reconcile where possible these principles and place them within a practical framework for easy reference and application.

98 The recommended framework is as follows.

(a) **Step 1: whether the counterclaim is plausible** – the court should first consider whether the counterclaim is plausible, *ie* whether it is reasonably possible for the counterclaim to succeed at trial (or in the slightly tortured formulation adopted in *Sheppards*, whether the counterclaim is "so far plausible that it [is] not unreasonably possible for it to succeed if brought to trial"). If the counterclaim is *not* plausible, then its presence ought not to stand in the way of the plaintiff obtaining summary judgment of its whole claim, without any stay pending the determination of the counterclaim, and the court

should so rule. If the court finds that the counterclaim *is* plausible, then **Step 2** follows.

(b) **Step 2: whether the plausible counterclaim amounts to a defence of set-off** – the court should then determine whether the counterclaim that it has found to be plausible amounts to a defence of set-off, whether legal or equitable. If it finds that the plausible counterclaim *does* amount to a defence of set-off, then unconditional leave to defend should be granted in respect of the whole of the claim. The reason for such a result is that when the court reaches such a conclusion, it has found in essence that the defendant has shown reasonable grounds of a real defence, and therefore leave to defend should, on the usual principles, be granted. On the other hand, if the counterclaim does *not* amount to a defence of set-off, then the court may proceed to **Step 3** below.

(c) **Step 3: whether the plausible counterclaim is sufficiently connected to the claim** – the court may then consider whether there is a connection between the claim (for which summary judgment is sought) and the counterclaim which it has considered to be plausible. If that counterclaim arises out of quite a separate and distinct transaction or it is wholly foreign to the claim or there is no connection between the claim and counterclaim, the court should generally grant summary judgment of the whole claim, without a stay pending the determination of the unconnected counterclaim.

If the court is satisfied of the degree of connection between the claim and counterclaim, it may proceed to **Step 4**.

(d) **Step 4: whether there are grounds for a stay of execution in light of the connected and plausible counterclaim** – if the court considers that there is really no defence to the claim and that as a consequence the plaintiff would be put to needless expense in proving its claim, the court should generally grant summary judgment of the whole of the claim. This is the default position where there are no triable issues under the usual approach (*ie* no fair or reasonable possibility that there is a real or *bona fide* defence, whether that of set-off or otherwise).

But, in the exercise of its discretion, where the court also finds (through an application of **Steps 1** and **3** above) that there is *a connected and plausible counterclaim*, this may provide grounds for the court to stay execution of the whole judgment (or a portion thereof) pending the determination of the connected and plausible counterclaim. A qualification applies in the situation where the quantum of the judgment exceeds that of the quantum of the counterclaim: in such circumstances, there should not be any stay of execution of the quantum of the judgment that is in excess of the counterclaim.

Beyond the above qualification, whether or not a stay of the whole or a part of the judgment should be granted is ultimately a matter for the court's discretion, to be exercised according to established principles. The degree of connection between the claim and counterclaim, the strength and quantum of the counterclaim and the ability of the plaintiff to satisfy any judgment on the counterclaim are some of the considerations which the court may take into account in the exercise of

> its discretion on whether to grant a stay: see *Singapore Civil Procedure 2016* at para 14/4/10; and *Tru-line* at [45]. The exercise of the discretion to grant or to refuse to grant a stay of execution of the whole or a portion of the judgment sum pending trial of a plausible and connected counterclaim will ultimately depend on whether the defendant is able to show that it would be fair and just in all the circumstances of the case to stay the immediate enforcement of the whole or a portion of the judgment sum due to the pending trial of the counterclaim. The burden lies on the defendant to prove that the stay is justifiable having regard to all the circumstances of the case.

99 I make one observation regarding Step 4. In my view, where there is no real defence to the claim and therefore summary judgment ought, according to the usual principles, to be granted, the appropriate effect of a connected and plausible counterclaim not amounting to a defence should *only* be that of a *stay of execution* pending determination of the counterclaim, rather than that of *unconditional leave to defend*. In other words, summary judgment ought to be granted in respect of the *whole* of the claim, rather than merely the part of the claim exceeding that of the counterclaim (with unconditional leave to defend the balance of the claim), in situations where the size of the claim exceeds that of the counterclaim. The reason is that the grant of summary judgment in respect of the part of the claim exceeding that of the counterclaim would lead to no reduction in the trouble and expense that the plaintiff would be put to at trial. In order to pursue the remaining part of the claim for which the defendant has been granted unconditional leave to defend, the plaintiff would still have to head to trial and lead – in all likelihood – *the very same type and amount of evidence* that he would have needed to lead if his application for summary judgment had utterly failed in the first place and he

therefore had to prove the entirety of his claim. The only benefit he obtains from his success in the summary judgment application is immediate entitlement to the quantum of the claim exceeding that of the counterclaim. The problem is made even more evident when the size of the counterclaim exceeds that of the claim. In such a situation, it would be perverse for unconditional leave to be granted to defend the whole of the claim, even in the absence of any triable issues in the claim; the correct response when there is really no real defence – as pointed out in *Sheppards* – is surely that of summary judgment subject only to a stay at the court's discretion. Any other approach would lead to a wastage of costs and the time of the court, the litigants and the witnesses.

100 In formulating the above framework, I have noted that Bingham LJ's categories in *Top Shop* have come under criticism. For instance, in Jeffrey Pinsler, "The Court's Response to Counterclaims in Proceedings for Summary Judgment" (2011) 23 SAcLJ 517, Professor Pinsler suggests that the fourfold classification has the potential to cause uncertainty because the categories are not analytically distinct. Bingham LJ's classification was based on a series of statements in the English *Supreme Court Practice 1991*, in which the editors had merely intended to summarise the effect of the case law in convenient propositions rather than offer a set of fixed or circumscribed categories or principles. I further note Professor Pinsler's criticism in relation to Bingham LJ's second category that a *bona fide* claim, although made in good faith, may be very weak and therefore provide little justification for the court to order unconditional leave to defend. Professor Pinsler argues (at para 15) that "[i]t is most unlikely that the court would grant unconditional leave to defend pursuant to the second class in these circumstances. It would construe "*bona*

fide" as entailing a claim that has the merit of being at least arguable." He further suggests as follows (at para 18):

> 18 … The second class refers to "*bona fide*" (which emphasises the intentions of the defendant), while the third class engages the term "plausible" (which is solely concerned with the merits of the counterclaim). One of the weaknesses of Bingham LJ's classification is that it is quite possible for an unmeritorious counterclaim to be put forward in good faith (as when the defendant wrongly but honestly believes that he has a valid case). Literally interpreted, the second class would encompass such a counterclaim (because it is *bona fide*). As it would be unjust to give unconditional leave to defend on the basis of a meritless counterclaim, the terminology of the second class should be modified to include a threshold standard (such as "arguable" or "plausible") in the second and third classes respectively. …

101 I agree with Professor Pinsler that it is insufficient for the defendant to seek unconditional leave to defend on the back of a counterclaim that he has brought in good faith but which is devoid of merit. I observe that the argument that a counterclaim must have a requisite degree of substance may draw support from a finding made by Thean J in *P H Grace* which I have quoted at [95] above. Thean J held (at [6]) that "the only point for consideration is whether [the first defendant's counterclaim] is a *bona fide* claim. On the affidavits filed it cannot reasonably be said that there is no prospect of the counterclaim succeeding if it is brought to trial; it is, in our opinion, a *bona fide* counterclaim." Thean J's reasoning indicates that the substance of the inquiry as to whether the counterclaim was *bona fide* was whether there was a prospect of the counterclaim succeeding if brought to trial. I therefore consider that the essence of the inquiry in this regard is the *plausibility* of the counterclaim.

My findings

102 As I have noted at [31] above, the assistant registrar observed at the beginning of the hearing of the summary judgment application that the defendant's counterclaim, *ie* for an order that the defendant be entitled to continue in occupation of the Sub-Leased Premises, is the complete opposite of the relief prayed for by the plaintiff, *ie* for repossession of the Sub-Leased Premises from the defendant. In this regard, it might be said that there was a connection between the claim and the counterclaim. They both arose out of the Compromise Agreement and shared the same material facts. For the same reasons, the counterclaim was also inextricably tied to the defence.

103 Regardless of the connection between claim and counterclaim, I did not, however, consider that the counterclaim had the requisite degree of plausibility. As stated at [98(a)] above, this is in fact the first step in the inquiry. The defendant never took any steps to seek a renewal or extension of the sub-lease, whether under cl 6(b) of the Compromise Agreement or otherwise. Neither did I consider that there was any merit in the defendant's assertions of an implied agreement and estoppel, or in its reliance on the doctrine of laches or acquiescence, insofar as the defendant intended those arguments to aid his pursuit of his counterclaim. None of those arguments were, in my view, at all likely to succeed at trial. In the circumstances, I rejected the defendant's submission that he should be granted unconditional leave to defend on the basis of his counterclaim. For the same reasons, I also rejected the defendant's alternative submission that he should be granted a stay of execution pending the determination of its counterclaim.

Application for stay of execution pending appeal

104 Following my dismissal of the defendant's appeal in RA 323/2016, the defendant filed an appeal to the Court of Appeal against my decision. On 6 October 2016, he then filed Summons No 4856 of 2016, seeking a stay of execution pending the appeal. During the hearing for the stay application on 7 October 2016, I was informed by counsel for the plaintiff that the defendant's sole proprietorship had in fact been terminated on 27 September 2013, *ie*, more than 6 months *before* the expiry of the Compromise Agreement on 31 December 2014. Counsel for the defendant did not dispute what was said.

105 After considering the parties' submissions and in particular, the newly discovered fact that the defendant's sole proprietorship had already been terminated, I dismissed the stay application and ordered that the defendant pay the plaintiff the costs of and incidental to the said application, to be fixed at $4,000 inclusive of disbursements.

Conclusion

106 For the foregoing reasons, I dismissed the defendant's appeal in RA 323/2016 and ordered the defendant to pay the plaintiff costs of and incidental to the appeal, such costs fixed at $7,000 including disbursements.

Chan Seng Onn
Judge

Arivanantham s/o Krishnan (Ari, Goh & Partners) for the plaintiff/respondent;
Chan Yew Loong Justin and Ng Sze Yen Charmaine (Tito Isaac & Co LLP) for the defendant/appellant.
