Jurong Town Corp *v* Dauphin Shipyard Pte Ltd
[2012] SGHC 179

Case Number : Suit No 127 of 2012 (Summons No 2330 of 2012)

Decision Date : 04 September 2012

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : William Ong and Magdelene Sim (Allen & Gledhilll LLP) for the plaintiff; Lim Chee San (TanLim Partnership) (instructed) and S Nabham (S Nabham) for the defendant.

Parties : Jurong Town Corp — Dauphin Shipyard Pte Ltd

Civil Procedure – Summary Judgment

Landlord and Tenant – Agreements for leases

4 September 2012

Lai Siu Chiu J:

1 This was an application by Jurong Town Corporation ("the plaintiff") for summary judgment under Order 14 ("Order 14") of the Rules of Court (Cap 322, R5 2006 Rev Ed) ("the Rules of Court"), pertaining to the holding over by Dauphin Shipyard Pte Ltd ("the defendant") of a plot of land located at Lot A6566 at 23 Tuas Road, Singapore 638490 ("the Premises") after its lease had expired.

2 On 10 August 2012, I granted summary judgment in favour of the plaintiff. As the defendant has filed a notice of appeal against the whole of my decision (in Civil Appeal No 101 of 2012), I shall now set out the grounds therefor.

The Facts

The parties

3 The plaintiff is a statutory board incorporated under the Jurong Town Corporation Act (Cap 150, 1998 Rev Ed). It is the owner and landlord of the Premises. The defendant is a company in the business of building and repairing ships. It was the lessee of the Premises.

Background

4 Pursuant to a Building Agreement and Supplementary Agreement made between the plaintiff and defendant dated 27 November 1981 and 22 March 1984 respectively, the defendant leased the Premises from the plaintiff for a term of 30 years ("the Lease"), from 16 April 1980 to 15 August 2010. The lease did not contain an option to renew. Rather, clause 1(xvi) of the Special Conditions of the Lease provided that the lessee was to yield up the Property to the lessor at the termination of the tenancy. The defendant claimed that at the time the Lease was executed, one of the plaintiff's officers made an oral representation to the founders of the defendant, that the defendant had a right or option to renew the Lease for a further 30 years after its expiry ("a 30+30 lease").

5 On 28 August 2009, the defendant applied to renew the Lease for a term of 20 years, until the year 2030. The application was made by way of the plaintiff's standard forms; the defendant made no mention of a right or option to renew the Lease for 30 years. Klint Thian ("Klint"), who is the defendant's managing-director, submitted the application. The plaintiff rejected the application by a letter dated 19 October 2009. Over the next six months, the defendant repeatedly sought the plaintiff's reconsideration of its application but to no avail.

6 Subsequently, the plaintiff offered the defendant a six months' extension of stay on the Premises, from 16 August 2010 to 15 February 2011 ("Extended Term") on a goodwill basis so as to give the defendant "sufficient time to wrap up any outstanding works and reinstate [their] site". Accompanying the offer was a letter setting out the terms of the extension, including a clause which stated that the letter constituted the "full terms and conditions governing the Extended Term". The Extended Term offer and accompanying terms were unconditionally accepted by the defendant by its letter dated 27 August 2010.

7 However, the defendant did not vacate the Premises at the expiry of the Extended Term (on 15 February 2011). Instead, the defendant proceeded to submit various appeals through ministers and Members of Parliament ("MP") in a bid to obtain an extension or renewal of the Lease. These included four appeals submitted through the MP of the Jurong GRC between September 2010 and February 2011, petitions to the Senior Minister of State and the Minister, for Trade and Industry in December 2010 and April 2011, as well as two petitions to the Prime Minister's Office in May 2011. In every petition, the defendant explained the reason for its rental arrears (which the plaintiff had alluded to in its rejection letters), and reiterated with increasing detail, various grounds on which the renewal of the Lease was justified. The appeals were not acceded to, although the plaintiff did offer the defendant a further three months' extension of stay from 16 February 2011 to 15 May 2011, and later, a third and final nine months' extension of stay from 16 May 2011 to 15 February 2012 ("the Third Extended Term").

8 The terms of the Third Extended Term were encapsulated in a letter dated 30 June 2012 ("Letter of Offer"), and required, *inter alia*, that the defendant pay the prevailing market rate for the Premises ("Land Rent") and a fee for the allocated water boundary line ("Waterfront Fee"), pay in advance a deposit of $120,000 ("the Reinstatement Security Deposit"), and conduct various works ("Reinstatement Works") on the Premises immediately prior to the expiry of the Third Extended Term.

9 The defendant unconditionally accepted the offer and terms of the Third Extended Term on 30 July 2011. However, it failed to vacate the Premises and conduct the Reinstatement Works by the time the Third Extended Term expired on 15 February 2012. The plaintiff hence commenced action on 20 February 2012, seeking, *inter alia*, vacant possession of the Premises.

The parties' submissions

10 In its defence filed on 16 March 2012, the defendant argued that the plaintiff was estopped from denying it a renewal of the Lease and/or extension of stay on the Premises by reason of the plaintiff's oral representation to the defendant at a meeting on 3 June 2011. It was alleged that the plaintiff's then Chief Executive Officer Manohar Khiatani ("Mr Khiatani") told Klint that there were cases of companies that had managed to obtain contracts to perform works on their premises even though their leases with the plaintiff were expiring and that in such cases, the plaintiff would consider extending their leases. Khiatani then asked Klint if the defendant had any contracts on hand. In reliance on this exchange, the defendant entered into various contracts for works to be performed on the Premises throughout the year 2012.

11 In response, the plaintiff stated that the defendant's account was inaccurate and that Khiatani had in fact informed the defendant that the plaintiff took many other factors into consideration in deciding whether or not to extend a lessee's stay on the land, and in some cases, companies with on-going contracts would be considered. Further, even based on the defendant's version, Khiatani's comments meant nothing more than that the plaintiff would consider the defendant's renewal application. It was not a representation that renewal would certainly be granted.

12 In any case, this argument of the defendant was not pursued by the time the plaintiff applied for summary judgment on 10 May 2012. In Klint's affidavit filed on 18 June 2012 in response to the Order 14 application ("the Show Cause affidavit"), Klint referred instead to an earlier oral representation made by a then employee of the plaintiff, one Oh Kim Wee ("Mr Oh"), to the defendant's founding members, Thian Kim Hoe (deceased) and Madam Tan Wah Leng ("Mdm Tan") at the time the Lease was executed (see [4] above). Mr Ho allegedly told the defendant's founders that they would have a right or option to renew the Lease at the prevailing market rate for a further 30 years after the expiry of the initial 30 year term by reason of the "huge investments involved and required of the defendant", but that it was neither necessary nor normal to include such an option in the Building Agreement.

13 This new allegation was refuted by the plaintiff's Deputy Director of the Aerospace, Marine and Cleantech Cluster, Loh Yew Pong ("Mr Loh") on affidavit, where he stated that the plaintiff did include in its building agreements an option to renew in cases where such an option was agreed upon at the outset. Mr Loh exhibited copies of some sample leases, which included an express option to renew for a further 30 years after expiry of the initial term, all granted at about the same time that the defendant's lease was granted.

14 The defendant cited other evidence to support the likelihood that such a representation had indeed been made — namely, a newspaper cutting from 31 March 1986, which stated that the government had been keen at the time to find tenants for industrial land and to renew existing leases, as well as a statement which Mr Loh admitted to making at a meeting with the defendant in 2010, that there was "no such thing as a right to lease renewal *anymore*" (emphasis added). The defendant argued that this suggested that the plaintiff used to have a policy of automatic lease renewal.

15 There was even an allegation of further representations made by the plaintiff's Assistant Manager of Lease Management, Ernest Tay ("Mr Tay"), in a letter sent to the defendant dated 4 July 2007 attaching a "Lease Renewal Application Kit" and indicating the criteria for lease renewal. The letter stated that the defendant should "ensure that all rental arrears are settled in full" prior to the lease renewal. The defendant took this to be a representation that the plaintiff was prepared to renew the Lease. In response, the plaintiff pointed out that there was nothing in Mr Tay's correspondence with the defendant that amounted to anything close to an assurance that renewal of the Lease would be granted. On the contrary, Mr Tay's sending of the Lease Renewal Application Kit was evidence that the plaintiff expected the defendant, like any other lessee of the plaintiff's plots, to submit a standard renewal application rather than rely on any prior right to renew.

16 The Show Cause affidavit was the first time that the representations of Messrs Oh and Tay (who were the plaintiff's representatives) were mentioned. The defendant explained that the reason why this important fact had not been brought to light earlier was that it did not know about the right of proprietary estoppel, not having been told about it by its previous solicitors. Mdm Tan stated on affidavit that:

> I was not aware of the defendant's right in proprietary estoppel, the right of 30+30 years of lease based on the promises/representations made by the plaintiff to the defendant and acted thereon

by the defendant to its detriment in the past years. Accordingly, I did not inform [Klint] of the same.

The defendant's right by way of proprietary estoppel was explained by our current solicitors to me after my explanation of the facts to them.

The law on summary judgment

17 Order 14 r 3(1) of the Rules of Court states:

Unless on the hearing of an application under Rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

18 The principles relating to summary judgment under Order 14 are well known, and clearly encapsulated in *Associated Development Pte Ltd v Loong Sie Kiong Gerald (administrator of the estate of Chow Cho Poon, deceased) and other suits* [2009] 4 SLR(R) 389 (*per* Judith Prakash J at [22]):

...in order to obtain judgment, a plaintiff has first to show that he has a *prima facie* case for judgment. Once he has done that, the burden shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence. (See *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32.) I would also note that where no triable issues of fact can be found but only triable issues of law are brought up, the *Supreme Court Practice 1999* (Sweet & Maxwell, 1998) at para 14/4/12 states:

Where the court is satisfied that there are no issues of fact between the parties, it would be pointless to give leave to defend on the basis that there is a triable issue of law, and this is so even if the issue of law is complex and highly arguable.

19 It was further explained by MPH Rubin J in *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 (at [25]):

The court must be convinced that there is a reasonable probability that the defendant has a real or *bona fide* defence in relation to the issues. In this regard, the standard to be applied was well-articulated by Laddie J in *Microsoft Corporation v Electro-Wide Limited* [1997] FSR 580, where he said at 593 to 594 that:

[I]t is not sufficient just to look at each factual issue one by one and to consider whether it is possible that the defendant's story in relation to that issue is credible. The court must look at the complete account of events put forward by both the plaintiff and the defendants and ... look at the whole situation. The mere fact that the defendants support their defence by sworn evidence does not mean that the court is obliged to suspend its critical faculties and accept that evidence as if it was probably accurate. If, *having regard to inconsistency with contemporaneous documents, inherent implausibility and other compelling evidence, the defence is not credible, the court must say so.* It should not let the filing of evidence which surpasses belief deprive a plaintiff of its entitlement to relief. [emphasis added]

Application to the facts of this case

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20 In the present case, I was convinced that the plaintiff had a *prima facie* case because it was evident from the face of the Building Agreement that the defendant had not contracted for anything other than a 30 year lease. The defendant accepted that there was nothing written to contradict the fact that the Lease did not contain an option to renew, let alone for 30 years. It could hardly be more obvious that, in breach of the terms of the Building Agreement, the defendant had failed to vacate the Premises and conduct the stipulated Reinstatement Works by the expiry of the initial Lease on 15 February 2010. It was, further, clear from the correspondence exchanged between the parties from 15 February 2010 to 15 February 2012, that the plaintiff had offered the defendant three extensions of stay on the Premises subject to certain written terms, which the defendant had unconditionally accepted, but had continuously failed to comply with in not vacating the premises upon the expiry of the Third Extended Term.

21 It was for the defendant to convince this court that it had a *bona fide* defence, and that there were issues or questions in dispute which required the benefit of ventilation at trial. However, the defendant failed to do so.

22 After hearing the defendant's evidence, I remained firmly of the view that the parties' rights and obligations were not otherwise than as expressly stated in the Building Agreement, and that there was nothing to be achieved in the interests of justice by sending the matter to trial.

23 The following aspects of the defendant's conduct appeared to me to be wholly contradictory to its defence that it had a right or option to renew the Lease:

(a) the submission of a standard application form on 28 August 2009 to renew the Lease for a further 20 years;

(b) the failure to make any mention of an option to renew in the course of the multiple appeals through government ministers; and

(c) the fact that the option to renew surfaced for the first time in the Show Cause affidavit filed on 18 June 2012.

24 The defendant's application to renew its lease for a further 20 years until 2030 was totally inconsistent with its claim that it believed itself to be entitled to an automatic right to renew for a further 30 years, ending in 2040. Instead of attempting to exercise its purported right or option to renew, the defendant merely used the regular Lease Renewal Application Kit, which the plaintiff sends to all its tenants with expiring leases, and submitted the standard lease renewal form on 28 August 2009. Accompanying that application was the defendant's financial statement for the year ending 31 December 2008, stating under the section titled "Operating Lease Commitments" that the defendant had a lease from the plaintiff for 30 years from 16 August 1980 to 16 August 2010. It is inconceivable why something as important to the defendant's survival as the promised right to renew for a further 30 years was not alluded to at all in the course of applying for a renewal.

25 Even more incongruous was the defendant's failure to mention any representation of a 30+30 lease when faced with the rejection of its application. Instead of pointing to the alleged promise made by Mr Oh in 1980, or even the purported recent representations made by Mr Tay in sending the Lease Renewal Application Kit, the defendant adopted a persuasive approach more aligned with that of an ordinary tenant to whom nothing had been promised, seeking to persuade the plaintiff to reconsider its decision in light of factors such as the defendant's past successes, its future business plans, its potential to contribute to the local industry as a home-grown enterprise, and the fact that livelihood

of its staff was at stake. Not once was the alleged oral representation of a 30+30 lease so much as mentioned, let alone flagged as a reason justifying a grant of renewal.

26 The same omission continued even as the defendant, in its mounting desperation, pursued a campaign of submitting appeals through government ministers. Of particular note was the defendant's letter to the plaintiff, which was submitted to the Senior Minister for State of Trade and Industry on 14 December 2010, setting out in great detail the defendant's substantial investment on the Premises, the merits of its application, and the importance of the renewal to the lifeblood of the company. The letter also addressed, line by line, the points raised in the plaintiff's letter of rejection dated 10 November 2010, and sought to justify the defendant's rental arrears.

27 By that stage, one would have expected any business faced with its impending demise to be clinging to every last iota of evidence in its favour, especially one as potentially determinative as the prior representation by the plaintiff's own agent, regardless of whether such a representation was thought to be legally enforceable. However, there was no mention of the same.

28 Before me, counsel for the defendant explained that the representation had not been raised because the defendant did not know about the legal concept of proprietary estoppel, and hence thought that the mere oral representation was "not significant". This was to me a telling concession. Having explained that it thought a mere oral representation bore no legal significance, it cannot lie in the mouth of the defendant to now say that it had then *relied* on such representation to enter into various binding contracts for works. Further, a layman does not need to know anything about the legal concept of proprietary estoppel to be able to understand the concept of a promise given and subsequently broken. Even a layman with scant or no legal knowledge would in such circumstances surely not hesitate to raise the crucial representation upon which he claimed to have relied for his investment decisions and protest in the strongest terms against the breaking of a promise.

29 The fact that the defendant remained silent on the point and simply resigned itself to unconditionally accepting a series of goodwill extensions each lasting under a year, without so much as a squeak about the potential of a further 30-year lease promised it, strongly suggested that such a representation, if it had been made at all, never operated in the minds of the defendant's officers.

30 The defendant's eagerness to demonstrate the extent of its investments on the Premises, which it claimed were done in reliance on the representation of a 30+30 lease was misguided and irrelevant. In fact, the plaintiff required *all* its lessees to invest in and develop their undeveloped lease premises according to their own business needs, even in cases where there is no option to renew the lease. The investments listed by the defendant, such as land improvements, investments into plant and machinery, building office buildings, a workshop and a canteen, all struck me as being necessary capital expenditure for the running of a business, even if it is for 30 and not 60 years.

31 Finally, I noted that the defendant did not plead proprietary estoppel based on the alleged representations of either Mr Oh or Mr Tay in its reply dated 2 April 2012. As stated earlier at [16], the allegation only surfaced in the Show Cause affidavit filed on 18 June 2012. The defendant contended that it was not precluded from raising new defences in its Show Cause affidavit which were not previously pleaded, relying on the Court of Appeal's observations in *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 ("*Poh Soon Kiat*") (at [15]):

> In our view, it was an unnecessary application as, in summary judgment proceedings, "[a] defendant may raise defences in his affidavit even if they are not referred to in the pleaded defence" (see *Singapore Civil Procedure 2007* (G P Selvam chief ed) (Sweet & Maxwell Asia, 2007) at para 14/2/12) and is "bound by the four corners of his pleadings [only] at the trial of the

action but ... not ... [in] the O. 14 [*ie*, summary judgment] proceedings" (*ibid*).

32 The position of the Court of Appeal is at odds with that taken in two earlier High Court decisions, namely *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd* [2008] 2 SLR(R) 786 and *United States Trading Co Pte Ltd v Ting Boon Aun and another* [2008] 2 SLR(R) 981, which state that a party challenging an Order 14 application is bound to the four corners of its pleading. In *PMA Credit Opportunities Fund and others v Tantono Tiny (representative of the estate of Lim Susanto, deceased)* [2011] 3 SLR 1021, Woo Bih Li J (at [31]-[33]) suggested that the Court of Appeal's attention had perhaps not been drawn to these two decisions, and that the position it took might have been different otherwise. Be that as it may, I am bound by the Court of Appeal's decision in *Poh Soon Kiat* and hence accept that the defendant is not precluded from raising the argument of proprietary estoppel in its Show Cause affidavit.

33 However, I found that the defendant's failure to raise such a critical argument at an earlier stage vastly reduced the credibility of its defence. In summary, the defendant failed to convince me that it had a *bona fide* defence and that there were issues which required adjudication at trial.

34 Consequently, I granted summary judgment to the plaintiff in terms of the following prayers:

(a) vacant possession of the Premises;

(b) costs and expenses of the execution of the Reinstatement Works, together with all Land Rent, Waterfront Fee, and all other amounts which the plaintiff would have been entitled to receive from the defendant had the period within which such Reinstatement Works were effected by the plaintiff been added to the Third Extended Term;

(c) double the rent of the Premises under s 28(4) of the Civil Law Act (Cap 43, 1999 Rev Ed), at the rate of $154,672.67 per month from 16 February 2012 until vacant possession of the Premises was delivered to the plaintiff;

(d) contractual interest on the sums awarded pursuant to s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed); and

(e) costs of the appeal and costs below to the plaintiffs on a full indemnity basis to be taxed unless otherwise agreed.