

HSBC Institutional Trust Services (Singapore) Ltd v Valuezy Pte Ltd
[2010] SGHC 169

Case Number : Suit No 408 of 2009 (Registrar's Appeal No 148 of 2010)
Decision Date : 31 May 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : John Wang and Richard Kalona (Robert Wang & Woo LLC) for the plaintiff/respondent; Bhargavan Sujatha (instructed counsel) and Dilip Kumar (Dilip Kumar Associates) for the defendant/appellant.
Parties : HSBC Institutional Trust Services (Singapore) Ltd — Valuezy Pte Ltd

DAMAGES – assessment

31 May 2010

Woo Bih Li J:

Introduction

1 The plaintiff HSBC Institutional Trust Services (Singapore) Limited ("the Landlord") was and is the landlord of a unit at 3 Temasek Boulevard #01-104/106 Suntec City Mall Singapore 038983 ("the Unit"). The defendant Valuezy Pte Ltd ("the Tenant") had entered into a lease agreement with the Landlord dated 19 January 2009 for the Unit. However, the Tenant failed to pay the rent for some months and eventually the Landlord took back possession of the Unit. The Landlord commenced this action to claim outstanding rent and damages. It obtained interlocutory judgment against the Tenant with damages to be assessed. The damages (including outstanding rent) were assessed at \$798,566.49. After deducting a security deposit of \$165,312.00, the balance was \$633,254.49. Interest at the rate of 4% above the prime lending rate of the United Overseas Bank Limited was also allowed. The Tenant appealed against the assessment of \$798,566.49. I dismissed its appeal with costs. The Tenant has filed an appeal to the Court of Appeal.

The court's reasons

2 The lease of the Unit was for a term of three years from 15 July 2008 to 14 July 2011. The rent had two components: the fixed rent and the percentage rent. The fixed rent per month was \$26.60 per square foot making a total of \$39,261.60 (which worked out to \$42,009.91 with 7% goods and services tax ("GST")). The monthly service charge was \$1.20 per square foot making a total of \$1,771.20 (which worked out to \$1,895.18 with GST). The monthly promotion fund contribution was \$0.20 per square foot making a total of \$295.20 (which worked out to \$315.86 with GST).

3 A letter dated 20 December 2008 from the Tenant's solicitors Dilip Maran Partnership to the Landlord's solicitors, Robert Wang & Woo LLC, stated that the Landlord was in breach of the lease agreement for a reason which I need not elaborate on as this contention is no longer in issue. It gave notice to terminate the agreement.

4 An email dated 22 December 2008 from the Tenant to the Landlord stated that the Tenant would vacate the Unit by 31 December 2008 (although the heading of that email inadvertently

referred to different premises).

5 A letter dated 2 January 2009 from the Tenant's solicitors to the Landlord's solicitors stated that the Tenant had vacated the Unit on 31 December 2008 and as there was a restoration period of ten days, this would commence from 1 to 10 January 2009 and the keys would be returned to the Landlord on 11 January 2009.

6 The Landlord did not accept the Tenant's allegation about the Landlord's breach. In a letter dated 15 January 2009, its solicitors informed the Tenant's solicitors that its position was that the lease was in full force and effect. However, should the Tenant deliver the keys to the Unit to the Landlord, the Landlord would market the Unit to prospective tenants to mitigate its damages.

7 Unfortunately, the Tenant did not hand over the keys to the Landlord promptly. Instead, through its solicitors, it accused the Landlord of causing its security guards to prevent the Tenant from commencing reinstatement work. The Landlord's solicitors did not address this allegation directly until later (on 24 March 2009) to deny the same. In the meantime, the Landlord's solicitors repeatedly mentioned that if the keys were delivered to them, the Landlord would market the Unit to mitigate its damages. There was no demand by the Landlord that the Unit had to be restored to its original state. However, the keys were not handed over by the Tenant. Apparently it then took the position that the keys belonged to it as the Unit was handed to it in a bare state before the commencement of the lease.

8 The correspondence between the two firms of solicitors went along similar lines for about three months when eventually the Landlord's solicitors wrote on 9 April 2009 to say that it would resume possession of the Unit on 14 April 2009.

9 Unfortunately, the Tenant's solicitors did not see this letter until 15 April 2009. Hence, the Tenant did not turn up for the handover of the Unit on 14 April 2009. Nevertheless, the Landlord said that it had taken possession of the Unit in the afternoon of 14 April 2009 although it is not clear how it did so.

10 Eventually, the Landlord secured a new lessee Oversea-Chinese Banking Corporation Limited ("OCBC") for the Unit for three years from 1 September 2009. The fixed rent was \$19.60 per square foot. Including GST, the total for the fixed rent component was \$30,954.67 per month. The service charge and promotion fund contribution were for the same amounts as in the Tenant's lease. The Landlord secured OCBC by calling OCBC in May 2009. Thereafter, a letter of offer dated 16 June 2009 was given to OCBC. With a fitting out period of one month, the new lease commenced on 1 September 2009.

11 The Landlord computed its claim as follows:

(a) For the period from 14 July 2008 to 13 April 2009 = \$348,416.18

This sum was primarily for arrears of rent. It also included figures for:

(i) the agreed licence fee for the display of promotion materials (\$1,369.60);

(ii) legal fees for the letter of demand under cl 34(b) of the lease agreement (\$176.55); and

(iii) the legal costs to prepare the lease agreement and stamp duty under cl 34(a) of the lease agreement (\$7,327.79).

The Tenant did not dispute liability for these three items or the quantum thereof.

(b) For the period from 14 April 2009 to 14 July 2011 = \$450,150.31

\$798,566.49

The total for both periods was \$798,566.49. After deducting a security deposit of \$165,312.00, the balance due to the Landlord was \$633,254.49.

12 The Tenant disputed liability for the arrears of rent for the first period on the argument that the Landlord prevented it from restoring the Unit to its original condition and hence it could not return the Unit to the Landlord earlier. Had it returned the Unit to the Landlord earlier, the Landlord would have commenced its efforts to look for another lessee earlier.

13 Yet, the Tenant's counsel accepted that the Landlord was not obliged in law to accept the return of the Unit earlier. This concession undermined the Tenant's objection to the claim for the arrears of rent for the first period.

14 I would add that the Tenant could have simply asked for an appointment with the Landlord to hand over the keys of the Unit to the Landlord earlier as the Landlord had repeatedly intimated. The Landlord had not insisted on restoration of the Unit then. However, for some reason unknown to me, the Tenant did not do so. Instead, the solicitors for each side were engaged in prolonged correspondence without achieving anything and it was only on 9 April 2009 that the Landlord put an end to the stalemate by stipulating 14 April 2009 as the date when the Landlord would take possession of the Unit and in fact taking possession on that date.

15 In my view, the Tenant remained liable for rent until 13 April 2009.

16 As for the period thereafter, the Tenant challenged the quantum of damages claimed by the Landlord on various grounds.

17 First, the Tenant alleged that it was not enough for the Landlord to advertise the availability of units generally in the development. It argued that the advertisements should have specifically identified the Unit. I did not agree. There must be various units in the development available for lease over time and the number of units and the individual units available would vary from time to time. To identify the specific units available would mean constant changes to the text of the advertisements which was, in my view, unnecessary in the present case unless there was some special feature of the Unit which should have been highlighted.

18 There was no evidence to show that had the Landlord taken any further step after 14 April 2009, beyond the steps it had in fact taken, it would have secured another lessee earlier than 1 September 2009.

19 The Tenant also questioned the quantum of the fixed rent to OCBC at \$19.60 per square foot as compared with its own fixed rent at \$26.60 per square foot. The Tenant alleged that the rent to OCBC was too low but it did not offer any evidence as to what a fair rent would be at that time. It seemed to me that the Tenant was simply trying to find fault with whatever the Landlord was able to achieve.

20 In the circumstances, I was of the view that the Tenant was also liable for the sum claimed for the second period.

21 Accordingly, I dismissed the Tenant's appeal.

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