

Trust Development Pte Ltd v Orientus Country Clubs & Resorts Pte Ltd
[2010] SGHC 203

Case Number : Suit No 242 of 2009
Decision Date : 20 July 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Felicia Ng (ComLaw LLC) for the plaintiff; Loy Wee Sun (Loy & Company) for the first defendant
Parties : Trust Development Pte Ltd — Orientus Country Clubs & Resorts Pte Ltd

Contract

20 July 2010

Choo Han Teck J:

1 The main issue in this action was whether the defendant, by its letter of 11 February 2009 to the plaintiff, repudiated its contracts with the plaintiff. I dismissed the plaintiff's claim and allowed the defendant's counter-claim for wrongful termination.

2 The plaintiff is Trust Development Pte Ltd ("Trust"). Lau Wee Leng ("Lau") and Voon Wui Leong ("Voon") are directors of Trust. The defendant is Orientus Country Club & Resorts Pte Ltd ("Orientus"), who was the tenant of No 1021 Mornington Crescent Seletar East Camp where a recreational clubhouse and resort was erected. The clubhouse and resort comprised of pre-existing overnight resort room facilities (the "Old Resort Rooms") and 25 overnight resort room facilities constructed by Orientus around the second half of 2007 (the "New Resort Rooms"). Jay Wong ("Wong") is the Chairman of Orientus. On 29 June 2007, the parties agreed that Trust would pay Orientus \$360,000 (of which Trust has paid \$330,000) for the exclusive rights to manage the New Resort Rooms from 1 August 2007 to 30 June 2011. In addition, Trust agreed to pay Orientus \$14,000 monthly for room services such as breakfast, room cleaning, laundry services, as well as additional utility charges. On 18 April 2008, the monthly payment was varied by a separate agreement to \$16,000 with effect from 1 April 2008. The \$16,000 covered both room services and utility charges. The two agreements will be collectively referred to as "the management agreements".

3 On 21 April 2008, the parties agreed that in consideration of Trust paying to Orientus \$30,000, Orientus agreed to reserve not less than 20 Old Resort Rooms per night for Trust's exclusive use (the "first booking agreement"). Pursuant to this agreement, Trust would pay \$60 for the use of each old Resort Room per night. The \$60 charge included the provision of breakfast for two persons and was to be deducted from the \$30,000 paid. On 12 August 2008, the parties further agreed that in consideration of Trust paying to Orientus \$12,000, Orientus agreed to reserve not less than 20 Old Resort Rooms per night for Trust's exclusive use (the "second booking agreement"). Pursuant to the agreement, Trust would pay \$60 (except for bookings made for the period 3 to 9 September 2008) for the use of each Resort Room per night. Unlike the first booking agreement, the \$60 charge here did not cover breakfast. The \$60 charges were to be deducted from the \$12,000 upon full utilization of the \$30,000 previously paid under the first booking agreement. In the second booking agreement, Trust also agreed to extend a loan of \$30,000 to Orientus ("the friendly loan").

4 Around 6 January 2009, Trust paid a sum of \$5,500 to Orientus. Around 7 January 2009, Repos Holiday, a subsidiary of Trust, issued a cheque for \$5,500 to Orientus. Around 15 January 2009, Repos Holiday issued another cheque for \$5,500 to Orientus. On 5 February 2009, there was a payment of \$2,732 from Trust to Orientus. Trust issued a payment voucher to Orientus, and this was acknowledged by Orientus. The payment voucher stated:

Description	Amount
	5,500
Less: Advance	500
Breakfast paid for Oct '07 (paid on 288 5/12/08 by Voon)	
Our Invoice 09-005	1,980
Cheque	2,732

5 On 11 February 2009, Orientus wrote a letter to Trust stating:

Re: MEMORANDUM OF AGREEMENT

- a) Please take note as of 01/01/2009 Orientus Country Clubs & Resorts Pte Ltd will provide utilities supply to your rooms only.
- b) We will not be managing your rooms or providing any services to your guests staying in your rooms.
- c) All previous contracts between Orientus Country Clubs & Resorts Pte Ltd and Trust Development Pte Ltd will be void with effect from 01/01/2009.
- d) Our utility service to Trust Development Pte Ltd is \$5,000.00 per month.

...

On 19 February 2009, Trust regarded this as a repudiation of contract and wrote to Orientus informing them of Trust's acceptance of Orientus' purported repudiation of the management and booking agreements. Following this, Trust brought this action against Orientus for wrongful repudiation of the management and booking agreements. Orientus denied the claim and counter-claimed for damages caused by Trust's breach of contract.

6 Orientus claimed that its letter dated 11 February 2009 was intended to reflect two oral agreements made by the parties to vary the management agreements, and not to repudiate the contracts. Orientus alleged that the first oral agreement was made sometime in December 2008, when Voon, Lau and Wong had agreed on behalf of the parties to reduce the monthly payment payable to Orientus under the management agreements to \$5,500 with effect from 1 January 2009. Under this new agreement, the monthly payment would cover the provision of utilities to the New Resort Rooms and usage of the swimming pool but not room services. Trust therefore paid Orientus \$5,500 on three occasions (around 6, 7 and 15 January 2009), representing two months deposit and 1 month advance for January 2009. Wong claimed that he hand-delivered an undated letter to Voon to confirm this arrangement (Trust however, denied receipt of this letter). As for the second oral agreement,

Orientus alleged that this was made around end January 2009 when Voon requested that the monthly payment be reduced to \$5,000. Therefore, around 5 February 2009, Trust paid Orientus \$2,732 i.e. \$5,000 for February 2009 less breakfast charges (which Trust had previously paid for on Orientus' behalf in October 2008) and other charges.

7 Trust agreed that there was an oral agreement to reduce the monthly payment under the management agreements from \$16,000 to \$5,500, but claimed that this was a temporary agreement made pursuant to Orientus' request and not intended to vary the management agreements permanently. As part of this temporary arrangement, Trust paid \$5,500 Orientus around 6 January 2009. Trust denied the subsequent two payments of \$5,500 (around 7 and 15 January 2009) were intended to be two months' deposit. Instead, it claimed that the two payments were a personal loan from Lau to Orientus, and Lau and Orientus agreed that Orientus would repay the loan by monthly instalments of \$500, which would be subtracted directly from the \$5,500 monthly payment made by Trust, and paid directly to Lau. Trust also denied that there was a second oral agreement. According to Trust, the February payment comprised of \$5,500 (monthly fee), less \$500 (repayment of the loan) and less breakfast and other charges. Hence, there was no intention to vary the management or booking agreements, and therefore, by the 11 February 2009 letter, Orientus repudiated the contracts wrongfully.

8 I found that in the 11 February 2009 letter, Orientus was referring to the management and not booking agreements. Orientus stated that it would "not be managing your rooms or providing any services to [Trust's] guests staying in your rooms." By "your rooms", I was of the opinion that Orientus was referring to the New, and not Old Resort Rooms. This was because, firstly, Trust had 'sole and exclusive right to manage' and 'quiet and uninterrupted use' of the New Resort Rooms but had to book the Old Resort Rooms. Thus, while it was logical to view the New Resort Rooms as Trust's rooms, the same cannot be said of the Old Resort Rooms. Secondly, as argued by Orientus, the provision for Trust to pay \$5,000 for utilities was illogical in the context of the Old Resort Rooms since payment was made on a per room basis. Thirdly, although Trust argued that Orientus could not be referring to the New Resort Rooms in clause (b) of the letter because Orientus never 'managed' the rooms to begin with (as Trust had the sole and exclusive right to manage those rooms), in my view, clause (b) was intended to clarify that Orientus would not be providing any services for the rooms.

9 I also found that there was a permanent agreement to vary the monthly payment from \$16,000 to \$5,500. In doing so, I accepted Wong's evidence that there was an undated letter from Orientus to Trust reflecting this arrangement. I am of the view that Wong was the more credible witness compared to Trust's witnesses. Although Lau denied receiving this letter, I noted that this was not the first undated letter that Trust has received and that Orientus also did not require Trust to acknowledge receipt of previous letters.

10 I also accepted Orientus' evidence that the two payments around 7 and 15 January were not a personal loan from Lau, but two months deposit made by Trust to Orientus. Trust relied on the fact that whereas the 6 January payment which was paid out of Trust's account, the 7 and 15 January payments were paid out of Repos Holiday's bank account as evidence that the payment was not made by Trust, but a personal loan from Lau. However, firstly, I noted that that Repos Holidays is owned entirely by Trust Development, and Voon and Lau were the only two directors of the company. When asked by counsel for Orientus why the cheques were issued by Repos, Lau changed his story and said that it was a loan by Repos which he personally guaranteed, and that if it was a personal loan from him, he would use his own personal cheque. This suggested that he knew the difference between being a lender and a guarantor, and yet despite this, he started off asserting that the \$11,000 was a personal loan from him to Orientus. Secondly, the two payments were each for \$5,500, which coincidentally, was the monthly payment amount as agreed by the parties. Thirdly, there was

no record of the loan or guarantor arrangement (unlike the friendly loan). That said however, I was also mindful that there was also no evidence that the two payments were made as a deposit, nor an explanation why such a deposit was required. Fourthly, Orientus issued an official receipt dated 15 January 2009 stating that \$5,500 had been received from Trust Development, which supports Orientus' claim that the 15 January payment was made from Trust to Orientus, and not a loan from Lau. Although Lau claimed that he had not seen this receipt before, I accepted Orientus' evidence and noted that Orientus did not require Trust to acknowledge previous receipts which it sent.

11 The difficulty in this case lay with the lack of conclusive documentation, either of the alleged loan agreement, the deposit, or the variation in contract terms. In light of my earlier findings, I found Orientus' version of events more credible and accepted that there was a subsequent agreement to lower the monthly payment from \$5,500 to \$5,000. A difficulty to Orientus' claim was the existence of the payment voucher from Trust to Orientus dated 5 February 2009 which stated that Trust paid \$5,500 to Orientus, less \$500 for an "advance" and less other charges. Orientus argued that very little weight should be placed on the payment voucher because it was normal for the recipient of a cheque to check only that the amount paid to him was correct, and he would not be concerned about the description on the payment voucher. Trust argued that the payment voucher was evidence of the loan arrangement between Lau and Orientus, and therefore, there was no subsequent agreement to lower the monthly payment to \$5,000. Although I found it odd that somebody would acknowledge receipt of payment without checking the contents of the payment slip, for the reasons already stated above, I also found Trust's explanation *ie* that there was a loan arrangement between Lau and Orientus doubtful. I noted that there was no evidence of the \$500 being paid to Repos as repayment of the alleged loan. Furthermore, I was of the opinion that the word "advance", did not unequivocally suggest a loan arrangement because it could also suggest that Orientus was entitled to the money but paid ahead of the due date.

12 In coming to my decision, I found it doubtful that Orientus would write the 11 February 2009 letter if there was indeed only a temporary arrangement to vary the monthly payment. Although Voon stated that he asked Orientus how long the temporary arrangement would last, it was not part of his evidence that Trust was pushing Orientus to resume the original agreement, neither was it part of Trust's version of events that the parties agreed to reduce the monthly payment to \$5,000 temporarily. In the circumstances, Orientus could have continued with the \$5,500 monthly payment arrangement indefinitely, and it was not in its interest to voluntarily reduce the monthly payment from \$5,500 to \$5,000, without obtaining any benefit. Thus, I did not believe that Orientus would unilaterally breach the contract through the 11 February 2009 letter. I therefore dismissed Trust's claim and found that Orientus did not, by the letter dated 11 February 2009, intend to repudiate the earlier contracts. Accordingly, I allowed Orientus' counter-claim. Costs to be adjourned for hearing before me.

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