IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 208

High Court Suit No 1233 of 2016

Between

Mumtaz Enterprise Pte Ltd

… *Plaintiff*

And

Kaki Bukit Developments Pte Ltd

… *Defendant*

JUDGMENT

[Contract] — [Oral Agreement]

Mumtaz Enterprise Pte Ltd
v
Kaki Bukit Developments Pte Ltd

[2017] SGHC 208

High Court — HC/Suit No 1233 of 2016
Choo Han Teck J
15–16, 22 and 29 August 2017

29 August 2017 Judgment reserved.

Choo Han Teck J:

1 The defendant built a dormitory for foreign workers. The dormitory is named "The Leo Residences" and is based on a new concept in which the residents will have not only a supermarket but also a food court as well as other facilities.

2 The plaintiff is in the business of running supermarkets. In this action, the plaintiff is suing the defendant for the breach of an oral agreement it claims it had made with the defendant. The plaintiff claims that on 15 January 2014 the defendant orally agreed to lease premises to the plaintiff for ten years. The plaintiff pleaded that by this agreement, the defendant would grant the plaintiff "the option to lease the premises for a minimum period of ten years". It further pleaded that the plaintiff shall "have the sole discretion of whether or not to continue the lease".

3 The defendant invited tenders for the lease of its premises at the Leo Residences. The plaintiff submitted its tender on 28 January 2014 for the lease of the premises to run a supermarket. It was informed in March 2014 that its tender to lease the premises was successful. A tenancy agreement was signed on 23 May 2014 granting the plaintiff a lease of the premises for two years from 1 May 2014 to 30 April 2016 at the monthly rent of $41,000. Thereafter, the plaintiff sought and was granted a reduction in the rent because it failed to obtain a liquor licence and no longer required the space reserved for selling alcohol. The rent was thus reduced to $33,000.

4 Under the tenancy agreement, the plaintiff is required to give a written request of their intention to renew the tenancy at least two months before it expired on 30 April 2016. They did not do so. Instead, the plaintiff completed the entire two years of lease under contract, and only when the lease was expiring did it write to the defendant requesting that they consider granting an extension of the lease for another two years from 2 May 2016. The defendant declined but offered a tenancy for three months with an option to extend for another three months. The plaintiff rejected the defendant's offer and counter-offered a two-year extension of the lease. The defendant rejected this counter-offer, and the plaintiff then relented and signed a three-month lease at an increased rent of $36,800 a month. At the end of the first period of three months, the plaintiff did not sign any agreement for the second extension but nonetheless remained for another three months (until 31 October 2016) paying the increased rent. The defendant subsequently opened a fresh tender which the plaintiff participated but was unsuccessful. The plaintiff then sued the defendant for breach of the alleged oral agreement.

5 The plaintiff's claim as pleaded appeared doomed from the start. The crucial particulars of the oral agreement, set out in paragraph 5(a) of the Statement of Claim allege that:

> Under the Agreement, if the Plaintiffs were successful in the tender, the Plaintiffs would be granted by the Defendants the option to lease the Premises for a minimum period of ten years.

It is not disputed that the plaintiff was successful in the first tender but the award and subsequent lease under the tenancy agreement was for only two years. The terms of the lease are clearly set out in the tender documents, and tenancy agreement which was signed by both parties on 23 May 2014, months after the alleged oral agreement of 15 January 2014.

6 From these undisputed facts, it is clear that there was no oral agreement to be enforced. The documents as well as the undisputed facts contradict any oral agreement that might have been made because the law assumes that the written agreement had superseded the oral one. Furthermore, neither counsel addressed the issue of whether the alleged agreement to grant a lease for a period of ten years must be in writing pursuant to s 6(d) of the Civil Law Act (Cap 43, 1999 Rev Ed). The plaintiff's best position might have been to plead that it took part in the first tender in 2014 only because of the defendant's representation that the plaintiff would be given a ten year lease, whether in a straight ten or on an extension basis. But that was not pleaded and the evidence does not support it either.

7 One of the main witness for the plaintiff, Mdm Jawahar Faritha testified that she believed it was the market practice to have ten-year leases. But she is wrong. That does not appear to be the market practice and the plaintiff presented no evidence to support that claim. Clause 29 of the tenancy agreement states that

> The Landlord may at the written request of the Tenant two (2) months' before the expiration of the said Term and at the written request by the Tenant grant to the Tenant a tenancy of the Premises for a further period and on terms to be mutually agreed upon by the parties hereto.

At best, the option to extend the lease has been incorporated into the tenancy agreement in cl 29 but the plaintiff did not exercise the option by making a request in writing two months before the expiry of the two-year term. In any event, by the time the plaintiff put in its bid in the second tender in 2016, there was no longer any basis or right to claim an oral agreement, made before the first tender, for a ten-year lease. The plaintiff submitted that the second tender "was merely a weak excuse and a charade for the defendant to breach the agreement". It is the submission that is weak. The plaintiff does not have to participate in that "charade". And there is no evidence that it had questioned the defendant as to why it needed a three-month contract followed by a fresh tender since there was already a lease agreement for ten years between the parties. It is also not correct for counsel to submit that "The Parties had always conducted their dealings via verbal agreements" — the parties entered into two written tenancy agreements which they were both bound by. There is no evidence that parties relied on verbal agreements in their correspondence or negotiations. There has been no reminder by the plaintiff to the defendant that they had an oral agreement.

8 Although Mr Cheong, counsel for the plaintiff, had given a speck of respectability to the plaintiff's case through his cross-examination, eliciting evidence that there were concessions made by the defendant, those concessions were minor and not relevant, and the defendant did not dispute them. Those concerned administrative matters that are ultimately governed by the written contracts. In any case, I am minded that evidence of the proof of the terms of the tenancy agreement can only be derived from the terms of the written

document itself (see s 93 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA")) and that the oral agreement between the parties cannot be admitted to contradict the terms of the said tenancy agreement (see s 94 of the EA). The two tenancy agreements are conclusive of the terms of the lease. The tenancy agreements make it clear that the lease was for an initial term of two years and was later extended for a three-month period, with an option to extend for a further three months under the second written agreement.

9 In any case, I am of the view that even if the plaintiff succeeds in proving the existence of the oral agreement, it would not be successful in its claim for damages. In my view, the plaintiff had not adduced any evidence of loss, let alone mitigation. During the closing address, Mr Cheong, without leave, produced some documents that he says contain evidence of the plaintiff's losses, but that was rightly challenged by Mr Vergis, counsel for the defendant. The defendant had no opportunity of knowing what those documents are and was unable to test their validity.

10 For the reasons above the claim is dismissed. I will fix costs after I hear submissions by counsel.

11 When the trial ended on 22 August 2017, the parties were told that judgment would be handed down on 29 August 2017 at 10am. On 28 August 2017 just before noon counsel for the defendant, Mr Vergis posted a letter, through e-litigation, to the registry stating:

> 1 We refer to the captioned matter, and the Honourable Justice Choo's directions for parties to attend before him on 29 August 2017 at 10:00am to receive judgment for the matter.
>
> 2 The Plaintiff's lead counsel, Mr Abraham Vergis, would like to convey his apologies to the Court as he will not

> be able to attend the hearing, as he will be in Taipei to speak at an arbitration conference at that time.
>
> 3 Our Ms Asiyah Arif will be attending the hearing to receive the Court's judgment on Mr Vergis' behalf.

The registry replied as follows shortly on the same day:

> As directed by The Honourable Justice Choo Han Teck, His Honour expects Mr Vergis' presence at the hearing fixed on 29 August 2017. Mr Vergis is to explain why he has not informed the Court of his unavailability when His Honour adjourned the hearing last week.
>
> Please write in by 28 August 2017, by 3pm. Thank you.

Mr Vergis responded as follows:

> 1. We refer to the Registry's letter dated 28 August 2017.
>
> 2. We would like to apologise that we were unable to respond by 3.00pm today. Our Mr Abraham Vergis was in a full day mediation today, and this Registry's letter was only brought to his attention this evening at around 8 p.m. Our Ms Asiyah Arif was also on leave today and was likewise only informed of the Registry's letter late this evening.
>
> 3. At the hearing last week, Mr Vergis was under the impression that he would be able to attend the hearing tomorrow and was very much looking forward to receiving the verdict personally. It was an innocent oversight on his part which is very much regretted. This is why, as soon as Mr Vergis realized his error, he informed the Court and apologized to the Court for his absence.
>
> 4. If His Honour prefers for Mr Vergis to personally attend the hearing to receive judgment, Mr Vergis would be happy to do so, but respectfully requests that the hearing be adjourned to the week of 4 – 8 September 2017 instead.
>
> 5. Once again, we apologise for any inconvenience caused.

12 As lead counsel with a junior counsel with him, Mr Vergis must lead by example and know that counsel do not direct the courts as to whether they will

attend or not, nor, as his second letter showed, when the court should sit, at counsel's convenience. When it comes to conduct and procedure of any proceedings, the court gives the directions and not the other way around. Nothing is to be done without the leave of court, and direction given may not be changed without the leave of court. In case Mr Vergis is unsure what he ought to have done to be proper, the answer is simply to write for an urgent audience before the court so that he could seek the court's leave for him to be absent, or for the matter to be adjourned.

13 This judgment was delivered with Mr Vergis absent.

- Sgd -
Choo Han Teck
Judge

Jeremy Cheong Yon-Wen and Rebecca Chia Wei Lin (I.R.B. Law LLP) for the plaintiff;
Vergis S Abraham and Asiyah binte Ahmad Arif (Providence Law Asia LLC) for the defendant.