Garden Hub Pte Ltd *v* Attorney-General
[2012] SGHC 20

Case Number	: Suit No 649 of 2011/H (Summons No 4939 of 2011/P and Summons No 4950 of 2011/L)
Decision Date	: 31 January 2012
Tribunal/Court	: High Court
Coram	: Jordan Tan AR
Counsel Name(s)	: Looi Ming Ming and Radika Mariapan (Eldan Law LLP) for the plaintiff; Jay Lee, John Lu and Teo Yu Chou (Attorney-General's Chambers) for the defendant.
Parties	: Garden Hub Pte Ltd — Attorney-General

Civil Procedure

31 January 2012

Jordan Tan AR:

Introduction

1 The defendant filed Summons No 4950 of 2011/L ("Sums 4950") to strike out the plaintiff's claim and Summons No 4939 of 2011/P ("Sums 4939") for the court to determine, in the alternative, several questions of law which would dispose of the matter. I ordered the plaintiff's statement of claim to be struck out in part and declined to answer the questions of law. I set out the reasons for my decision here.

The Background

2 The parties entered into a state tenancy agreement dated 26 February 2010 for the plaintiff to occupy 60 Jalan Penjara (Parcel B), Singapore 149375, State Land Lots 3536N(PT) MK 02 and 3432N(PT) MK 03 ("the premises") for three years commencing 17 February 2010. The premises belonged to the state and the state tenancy agreement was entered into by the defendant pursuant to r 19 of the State Lands Rules (Cap 314, Rule 1). The State Lands Act (Cap 314, 1996 Rev Ed) is the parent legislation to those rules.

3 Under the state tenancy agreement, the plaintiff had to comply with the following pertinent clauses:

(a) Clause 5.1.4: "To use the said premises only as **Plant Nursery, Orchid/Flower/Ornamental Plant Production** and not to use the said premises for any other purpose without the prior written consent of the Landlord." (emphasis in original)

(b) Clause 5.1.5: "To obtain the prior written approval from the Landlord for any intensified land use (e.g. placement of containers, erection of shelter etc.) of said premises."

(c) Clause 7.2: "Not to assign, transfer, sublet, license or part with the actual or legal possession or use of the said premises or any part thereof except with the prior written consent of the Landlord."

(d) Clause 7.3: "No permanent building or temporary structures shall be constructed/used or permitted to be constructed/used on the said premises except with the prior written consent of the Landlord."

4 The defendant alleged that the plaintiff had breached these clauses and thus terminated the state tenancy agreement by way of a letter dated 8 September 2011 served by hand. Paragraph five of the letter stated as follows:

> By reason of your breaches of the Tenancy Agreement, and pursuant to Rule 29(1) of the State Lands Rules, I hereby give you notice to terminate the tenancy on **22 September 2011**. You are to:
>
> (a) deliver possession of the Premises to me in good and tenantable repair and condition on 22 September 2011; and
>
> (b) remove all your movable property from the Premises by 22 September 2011.
>
> [emphasis in original]

5 In the light of the defendant's position as stated in this letter, the plaintiff filed this suit, Suit 649 of 2011/H ("Suit 649") against the defendant seeking the following material reliefs:

> (1) Relief against forfeiture of the lease under the Tenancy Agreement pursuant to the inherent jurisdiction of these Honourable Courts on such terms as may be just and equitable;
>
> (2) Further and/or in the alternative, relief against forfeiture of the lease under the Tenancy Agreement pursuant to section 18 of the Conveyancing and Law of Property Act (Cap. 61), on such terms as may be just and equitable;
>
> (3) Further and/or in the alternative, a declaration that the Defendant's purported notice of termination dated 8 September 2011 is invalid;
>
> (4) Further and/or in the alternative, a declaration that the Plaintiff's use of the land falls within the allowable use contemplated under Clause 5.1.4 of the Tenancy Agreement;
>
> (5) Further and/or in the alternative, a declaration that the Tenancy Agreement ought to be rectified so as to embody the true agreement actually made between the Plaintiff and the Defendant and/or the true intentions at the time and that the said agreement should be treated as being so rectified...

6 Simply put, the plaintiff sought relief against forfeiture; and in the alternative, a declaration that the notice of termination was invalid; a declaration on the scope of the proper use of the land under cl 5.1.4; and a rectification of the tenancy agreement to reflect the true intentions of the parties.

7 In these applications, the defendant sought to strike out the plaintiff's claim. In the alternative, it sought to have the following questions determined pursuant to O 14 r 12(1) of the Rules of Court (Cap 322, R5, 2006 Rev Ed):

> (a) Whether the termination of the tenancy agreement was valid?

(b) Whether relief against forfeiture under s 18 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") is available to the plaintiff?

(c) Whether relief against forfeiture through the exercise of the inherent jurisdiction of the court is available to the plaintiff?

8 These questions are different from the questions as originally framed in Sums 4939 as the defendant had made an oral application, which I had allowed, to amend the contents of Sums 4939 to reflect these revised questions.

My Decision

Pleadings and questions of law concerning relief against forfeiture and termination

9 I did not strike out that part of the plaintiff's statement of claim pertaining to relief against forfeiture and the validity of the termination notice. I also declined to answer all three questions of law. I explain first my decision to refuse to answer the questions of law.

10 The questions of law posed were novel questions of considerable public importance and not suitable for summary disposal under O 14 r 12. With regard to O 14 r 12, Chong J in *ANB v ANF* [2011] 2 SLR 1 set out comprehensively the history of that provision. The learned judge observed (at [24] to [28]) that English jurisprudence was such that the English Court of Appeal had adopted two divergent approaches towards the O 14 summary judgment procedure. The first approach was to deny summary judgment as long as the defendant could raise a serious defence even if that defence was based on a point of law that could be decided at the interlocutory stage. The second approach showed a greater readiness to deal with complex issues of law in an O 14 application where that issue of law was dispositive of the dispute in question. The divergent approaches confused the lower courts and necessitated the introduction of O 14A of the English Rules of the Supreme Court to allow the court to answer any question of law. Order 14 r 12 of the Singapore Rules of Court is in *pari materia* with the English O 14A.

11 Chong J observed thus of the English O 14A (at [28]):

> Order 14A mandated that where the court was of the opinion that the defendant had raised an arguable defence on a *question of law*, it could proceed to determine that issue of law in an interlocutory manner and grant summary judgment. [emphasis in original]

12 Chong J's observation is a general pronouncement on the tenor of the English O 14A and thus O 14 r 12 of the Rules of Court which is the Singapore equivalent. Nonetheless, there are exceptional situations in which the court should refrain from answering a question of law under O 14 r 12. On this point, the Court of Appeal's decision in *Obegi Melissa and others v Vestwin Trading Pte Ltd and another* [2008] 2 SLR(R) 540 ("*Obegi Melissa*") is apposite. In that case, the Court of Appeal (V K Rajah JA delivering the grounds of decision of the court) made the following observations on O 14 r 12(1) applications:

> 40 ... We decided, without adjudicating conclusively on the merits of each side's case, that the matter should proceed to trial instead of being summarily determined. In *Lim and Tan Securities Pte v Sunbird Pte Ltd* [1991] 2 SLR(R) 776, Chan Sek Keong J (as he then was) held at [22] that "the novelty of the legal issues and also the uncertainty of the factual issues that ha[d] become apparent" warranted a full trial in that case. As this court pointed out in *Tat Lee Securities Pte Ltd v Tsang Tsang Kwong* [1999] 3 SLR(R) 692, the O 14 r 12 procedure is not appropriate where

the law relating to the issues in dispute is unclear and more evidence is needed before those issues can be satisfactorily determined. The present suit similarly raised novel legal issues and required a full examination of all the relevant facts. It was thus unsuitable for determination under O 14 r 12.

41 To elaborate, the law on abandonment has not been settled in Singapore. There is no legislation, case law or authoritative academic view on title to or possession of items which have been disposed of as rubbish. In particular, there is no recent English jurisprudence on this area of the law, and comparative common law decisions provide little by way of consensus or guidance. The positions vary across different jurisdictions, with the courts in Australia, Canada and the US generally recognising, but applying differently, the concept of "divesting abandonment" - *ie*, the abandonment of both ownership as well as possession.

42 Rubbish disposal - the paradigmatic example of "divesting abandonment" - is a necessary and common occurrence in daily life. It is usually regarded as a mundane matter and is taken for granted until a case like the present suit arises. The disposal of rubbish may also raise, as demonstrated by the facts of this case, the issue of protecting the privacy of individuals and business entities. This is a matter of considerable public importance and should not be decided summarily. Furthermore, there are, in our view, several important findings of fact that need to be made before the respondents' claim against the appellants can be properly determined.

13 The Court of Appeal declined to summarily dispose of the matter under O 14 r 12 for two reasons. First, the nature of the legal issue in *Obegi Melissa* (the question of title to or possession of items which have been disposed of as rubbish) was novel and of considerable public importance and should not be decided summarily. Second, there were important findings of fact that needed to be made before the claim could be properly determined.

14 The defendant argued that *Obegi Melissa* was decided on the basis of the second reason and that the first reason, namely that the legal issue was of considerable public importance, was not an independent ground for refusing to summarily dispose of the matter under O 14 r 12. I disagree. Chan J in *Lim and Tan Securities Pte v Sunbird Pte Ltd* [1991] 2 SLR(R) 776, quoted in *Obegi Melissa* (at [40] quoted above at [12]) had stated that a full trial was warranted because of "the novelty of the legal issues *and also* the uncertainty of the factual issues that ha[d] become apparent" (emphasis added). The emphasised words suggested that the uncertainty of the factual issues was an *additional* factor militating against summary disposal of the matter. The following observation of the Court of Appeal in *Obegi Melissa* (at [42] quoted above at [12]) also makes this clear:

> This is a matter of considerable public importance and should not be decided summarily. *Furthermore*, there are, in our view, several important findings of fact that need to be made before the respondents' claim against the appellants can be properly determined. [emphasis added]

15 The court is not obliged to summarily dispose of the matter under O 14 r 12 simply because the facts are uncomplicated. Ultimately, the court has to consider the suitability of the matter for summary disposal. Although the facts may be uncomplicated, there could be other factors militating against the summary disposal of the matter. In this connection, the Court of Appeal's observations in *Obegi Melissa*, suggest that questions of law of considerable public importance should not be dealt with summarily. Why this is so is plain. The devil is in the details and the details are in the facts of a case. What appears factually uncomplicated at the interlocutory stage more often than not turns out to be factually complicated at trial. In run of the mill cases which do not raise questions of law of considerable public importance and which appear factually uncomplicated, the legal process accepts

the risk of assuming so and deals with the legal issues that arise at the interlocutory stage as efficiency and costs savings are weighty considerations. But where the questions of law raised are of considerable public importance, considerations of efficiency and costs savings are outweighed by the need to deal with these issues thoroughly in the light of the ramifications of a decision on those issues. Thorough treatment of issues of considerable public importance requires the consideration of those issues in their factual context as fully fleshed out at trial.

16 This was a case in which the issues of law raised (as framed by the defendant (see [7] above)) are novel questions of considerable public importance. The following points I had raised to counsel in the course of discussing the issues demonstrates the complexity of the matter and their ramifications. First, is relief against forfeiture precluded when the defendant terminates a state tenancy agreement under r 29(1) of the State Lands Rules? That rule reads as follows:

> **Cancellation or revocation of licence and termination of tenancy agreement.**
>
> 29 – (1) The Collector of Land Revenue may at any time cancel or revoke any licence issued or terminate any tenancy agreement entered under these Rules.

17 The defendant argued that regardless of whether the plaintiff had breached the terms of the tenancy agreement, it was entitled to terminate the tenancy agreement under r 29(1). This was clearly supported by the wording of r 29(1). What was unclear, however, was whether termination under r 29(1) of a state tenancy agreement was such that relief against forfeiture was precluded. In other words, is a state tenancy agreement different from a regular tenancy agreement entered into between individuals so that relief against forfeiture is available under s 18 of the CLPA or the court's equitable jurisdiction where a regular tenancy agreement is concerned but not where a state tenancy agreement is concerned?

18 Did the Executive intend to exclude the court's powers where a state tenancy agreement is concerned? In the context of a state lease (which is different from a state tenancy agreement) governed by rr 5 to 18 of the State Lands Rules, Parliament took pains to stipulate in the parent act, the State Lands Act, in s 13A(7) that the inclusion of that section "shall not affect the powers of the court to give relief against forfeiture". Where Parliament is cautious to include an express clarification in the parent act even when s 13A does not affect the court's powers, would the Executive exclude these powers without any provision expressly stating so in the subsidiary legislation?

19 There are more questions. What is the nature of a state tenancy agreement? Does it confer proprietary interest so as to engage the equitable jurisdiction of the court so as to allow the court to grant relief against forfeiture or does it only confer a personal interest? The learned editors of *Tan Sook Yee's Principles of Singapore Land Law* (Singapore: LexisNexis, 3rd Ed, 2009) take the view (at [4.16]) that: "[state tenancy agreements] are also technically leases but differ from State leases in important respects [such as being limited in term to three years and does not require the President's approval to be granted]". On the other hand, Professor Ricquier in *Land Law* (Singapore: LexisNexis, 4th Ed, 2010) takes the view (at p 14) that "[a state] tenancy agreement gives only a personal interest to the licensee". I note in this regard that r 26(1)(d) of the State Lands Rules provides that the state tenancy agreement shall cease and be determined on the death of the tenant. A traditional analysis under property law would suggest that this condition is repugnant to the granting of proprietary interest. What then is the nature of a state tenancy agreement?

20 The termination itself also presents a whole host of questions. First, although r 29(1) allows the defendant to terminate the tenancy agreement at any time, r 19(2) permits the defendant to subject the tenancy agreement to such terms and conditions as the defendant considers fit to impose. Where

the defendant has stipulated terms and conditions in the tenancy agreement, is the defendant entitled to contend that regardless of whether those terms and conditions have been breached, it is entitled to terminate under r 29(1)? In other words, is the defendant entitled to terminate under r 29(1) regardless of the terms and conditions it had prescribed as governing the relationship of the parties?

21 Second, with regard to the notice of termination, the plaintiff contends that the defendant did not give good notice of termination because personal service is not provided for under the tenancy agreement. The plaintiff argues that the defendant should have served the notice in accordance with cl 10.6.1 of the tenancy agreement which does not expressly stipulate personal service on the plaintiff as a mode of service. In this regard the defendant referred me to the decision of Woo J in *Kader Mydeen s/o Muthu Ibrahim Samsudin v Gulab Bhojraj and another* [2008] SGHC 175 which concerned a clause almost identical to cl 10.6.1. Woo J concluded that although personal service was not expressly stipulated, it was good service within the meaning of the clause.

22 I expressed the view that Woo J's case was on all fours with this case with regard to the interpretation of cl 10.6.1 but that there were more important issues which parties had missed. First, was a notice of termination even necessary to terminate a state tenancy agreement? For ordinary leases, it made sense to require a notice of termination to be served in accordance with certain formalities for without such notice, the tenant would never know that the landlord intended to bring an end to the tenancy. But a state tenancy agreement is governed by rr 19 to 31 of the State Lands Rules. Rule 30 provides instead for a notice to quit to be served before proceedings may be taken under the State Lands Encroachment Act (Cap 315, 1985 Rev Ed) to remove the occupants of state land. It thus seemed that under the unique regime of the State Lands Rules, a notice of termination is not required to be served in accordance with any particular procedure. If a tenant does not leave when told that the tenancy is terminated (regardless of how this information is conveyed whether by written notice or orally), the relationship is brought to an end and the tenant evicted only after a notice to quit is served pursuant to r 30. It may be argued that under this regime, the conveying of the intention of the defendant to terminate may be done by any means because unlike an ordinary lease where continued possession after the termination date carries certain civil penalties, no adverse action can be taken against the tenant under a state tenancy agreement until the notice to quit is issued. In that sense, the tenant is not prejudiced even if the termination is not brought to his attention in accordance with the usual formalities. He is only adversely affected *after* the notice to quit is served and that must be served properly in accordance with r 30. Arguably, for a state tenancy agreement, it is the formalities for service of the notice to quit that must be observed and a "notice of termination" is not required to be served in any particular way or even required at all.

23 These questions of law are not only complex and raise numerous sub-issues of equal or greater complexity, they are also issues of considerable public importance. The determination of these issues affects the rights of every single tenant who has entered and will enter into a state tenancy agreement with the government. These are issues of considerable public importance the determination of which has far reaching implications.

24 For these reasons, I declined to summarily dispose of the matter by answering the questions of law posed by the defendant. For the same reasons, I disagreed with the defendant that the plaintiff had no reasonable cause of action with regard to the relief against forfeiture and the notice of termination issues and concluded that the plaintiff had a chance of success in these matters. I therefore refused to strike out the prayers and related paragraphs connected with these issues.

Pleadings concerning breach

25 I struck out the plaintiff's prayers and pleadings concerning breach of the state tenancy agreement. It was clear that on these points, the plaintiff had no reasonable cause of action. First, with regard to breach of cll 5.1.5 and 7.3 (quoted above at [3]), it was clear even from the plaintiff's pleaded case that there had been a breach. The relevant parts of the amended statement of claim read as follows:

> 30 As a necessary incident to plant nursery, flower/orchid/ornamental plant production and other landscape-related activities, some of the Plaintiff's sub-tenants erected makeshift structures for landscape tools, equipment, chemicals, fertilizers and indoor plants.
>
> ...
>
> 46(3)(a) While some of [the plaintiff's] sub-tenants had erected agricultural shade nets and temporary structures for landscape tools, equipment, chemicals, fertilizers and indoor plants, this was however a necessary incident to plant nursery, flower/orchid/ornamental plant production and other landscape-related businesses and do not fall within the purview of Clauses 5.1.5 and 7.3.

26 Clauses 5.1.5 and 7.3 make it clear that the structures erected by the plaintiff's sub-tenants require prior written approval from the defendant and such approval was not sought before the construction of these structures. The plaintiff had sought to argue that approval could not be unreasonably withheld. However, it was clear that the plaintiff had not even sought approval *prior* to the construction of the structures. The plaintiff had pleaded in its statement of claim (at 32]) that the defendant had written on or about 21 February 2011 to express concern about the "unauthorised structures." The plaintiff then pleaded (at [31]) that it had made known the presence of the structures to the defendant by a letter dated 2 March 2011 but had received no reply as to whether approval was granted for these structures. In my view, that approval was sought subsequent to the construction of the structures was fatal to the plaintiff's case on this issue. Even if I had accepted the plaintiff's argument that it would have been unreasonable for the defendant to withhold approval, that the plaintiff had not even sought approval *prior* to the construction of these structures renders its case unarguable in the light of the express wording of cll 5.1.5 and 7.3 which require *prior* written approval/consent.

27 As for breach of cl 7.2, I accepted the defendant's submission that the plaintiff had sublet the premises even before it had sought approval. The plaintiff's email of 21 December 2010, signed off by Philip Teh for the plaintiff, had stated "Please see the attached files of sub tenants as at 1st December 2010." This email demonstrates that approval was sought only after the premises were sublet, contrary to cl 7.2 which requires prior written consent before the premises could be sublet. Although the plaintiff had relied on the defendant's reply on 22 December 2010 that it would evaluate the request and its subsequent silence as demonstrating approval or waiver, this argument is unsustainable in the light of the defendant's letter of 3 January 2011 which reiterated the defendant's position that the plaintiff was not allowed to sublet the premises without obtaining prior approval.

28 As for breach of cl 5.1.4, it was plain even from the plaintiff's documentary evidence that there had been a breach in the sense that the premises were used for purposes other than as a "plant nursery, [or] orchid/flower/ornamental plant production". Of the many examples, I highlight two. First, one of the plaintiff's subtenants Red House Carved Furniture Co was selling antique furniture. Philip Teh from the plaintiff wrote an email dated 28 January 2011 to the proprietor of Red House Carved Furniture Co asking it to explain how the products and services fit with the "sanctioned usage". The proprietor was entirely candid and replied on 8 February 2011 stating the following:

> I do hope you'll give us some time to perform the necessary changes as we still have some old stock from our previous addresses. Our company is slowly moving into a new field of business, from antiques to garden related product, and this transition will require some time to complete.

29 Second, one of the plaintiff's other subtenants, Jehan Gallery Pte Ltd, sold carpets. Plaintiff's counsel tried her best to argue that these were perhaps "outdoor carpets" and fell within the category of garden furniture. In a moment of levity, the defendant's counsel stated that he had never heard of "outdoor carpets" to which plaintiff's counsel replied that she herself owned several outdoor carpets. What was perhaps more important was the fact that the plaintiff's counsel had no instructions that these were outdoor carpets. The defendant's affidavits also exhibited photographs showing quite plainly that these were not outdoor carpets.

30 I am mindful that the determination of a striking out application should not involve a protracted examination of all the evidence. In the present case, however, even on a cursory examination of the pleadings and the evidence, the plaintiff's own evidence no less, it was plain and obvious that the plaintiff had breached cll 5.1.4, 5.1.5, 7.2 and 7.3.

31 I thus struck out the plaintiff's pleadings suggesting that there had been no breach of these clauses. Nonetheless, I allowed the plaintiff the option of retaining certain pleaded background facts or amending the statement of claim to reintroduce these facts as background facts as these were pertinent to the claim for relief against forfeiture.

Pleadings concerning rectification

32 I struck out the plaintiff's prayer and related pleadings concerning rectification. The plaintiff had pleaded that the state tenancy agreement did not properly reflect the intentions of the parties. The plaintiff relied on the decision of the House of Lords in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101. In that case, Lord Hoffmann quoted favourably (at [60]) the following passage from Denning LJ's decision in *Frederick E Rose (London) Ltd v William H Pim Jnr & Co Ltd* [1953] 2 QB 450 at 461:

> If you can predicate with certainty what their contract was, and that it is, by a common mistake, wrongly expressed in the document, then you rectify the document; but nothing less will suffice.

33 It was impossible to predicate with certainty what the state tenancy agreement truly was as argued by the plaintiff. This was so as the plaintiff was relying on the pictures in the plaintiff's presentation tender slides to delineate the scope of the state tenancy agreement which it argued was the true agreement but was wrongly recorded. A picture paints a thousand words and of its many meanings, I am unable to predicate with certainty this alleged contract which the plaintiff argued was actually entered into but unfortunately wrongly expressed in the state tenancy agreement.

34 For these reasons, I struck out the plaintiff's pleadings relating to rectification.

Conclusion

35 After giving my orders, the parties attended a hearing before me on 9 January 2012 to determine specifically the parts of the plaintiff's statement of claim which should be struck out. The plaintiff sought to make and did make further arguments. My decision remained unchanged.

36 I should add that plaintiff's counsel also represented Nursery Mart Pte Ltd in Suit 647 of 2011/Z

("Suit 647") against the same defendant. The statement of claim for that suit was substantially similar. The defendant took out similar applications, Summons No 4930 of 2011/A and Summons No 4951 of 2011/Q, to determine the same questions of law and to strike out that claim. Before me, the parties dealt primarily with Suit 649 taking the position that my orders on Suit 647 should mirror that for Suit 649. In the result, I made similar orders for the defendant's applications for Suit 647. My reasoning for those orders was the same as my reasoning for the orders I had made on these applications.

37 Costs to be taxed unless agreed upon.