

Jumaiah bte Amir and Another v Salim bin Abdul Rashid
[2019] SGHC 63

Case Number : Suit No 654 of 2018
Decision Date : 12 March 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ang Mei-Ling Valerie Freda and Hiren George Jonas (K&L Gates Straits Law LLC) for the plaintiffs/defendants-in-counterclaim; Pereira George Barnabas and Sarah Yeo (Pereira & Tan LLC) for defendant/plaintiff-in-counterclaim.
Parties : Jumaiah Binte Amir — Mohammad Ezzad Bin Abdul Rahim — Salim Bin Abdul Rashid

Contract – Breach – Settlement agreement

[LawNet Editorial Note: The appeal in Civil Appeal No 82 of 2019 was deemed to have been withdrawn.]

12 March 2019

Judgment reserved.

Choo Han Teck J:

1 The plaintiffs are Jumaiah Binte Amir (“Jumaiah”) and Mohammad Ezzad Bin Abdul Rahim (“Ezzad”). Jumaiah is the mother of Ezzad and his sister, Eluza Binte Abdul Rahim (“Eluza”). All three of them were the joint owners of a house known as 76C Lorong Marzuki (“the Property”). On 30 April 2015, an agreement to sell the Property for \$2.7m to the defendant (“the Initial Agreement”), Salim Bin Abdul Rashid (“Salim”) fell through. Salim then sued the plaintiffs for breach of contract in HC/Suit 1266 of 2016 (“Suit 1266”). It was not disputed that Salim was given possession of the house, and was allowed to make renovations to the house before the plaintiffs had intended to convey the Property to him under the Initial Agreement.

2 The parties in Suit 1266 went for mediation before Kan Ting Chiu SJ and Ramesh s/o Selvaraj to resolve their contractual dispute. A settlement agreement was eventually signed between Jumaiah, Ezzad and Salim on 10 July 2017 (“the Settlement Agreement”). Eluza did not sign, presumably because she was a bankrupt at the time.

3 Pursuant to cl 4(a) of the Settlement Agreement, Salim was to purchase the Property for \$3m if he was unable to “source for a purchaser by 31 December 2017”. Clause 5 of the Settlement Agreement provides that if Salim could find a buyer willing to purchase the Property above \$3m, he was entitled to the purchase money above \$3m.

4 Salim’s real estate agent, Mr Abdul Rahim bin Mamyuni (“Rahim”) found a buyer who was willing to buy the Property for \$3.4m (“the Initial Buyer”). The Initial Buyer changed his mind and withdrew his offer on 7 December 2017. Later, on 2 January 2018, Salim informed the plaintiffs that he (Salim) had decided not to purchase the Property. Salim returned vacant possession of the Property to the plaintiffs on 8 January 2018, and the plaintiffs eventually sold the property to one Tan De Tong and one Tan Meow Hwee (“the Actual Buyers”) on 30 April 2018 for \$3.38m.

5 The present action in HC/Suit 654 of 2018 was commenced initially in the State Courts by the

plaintiffs for vacant possession of the Property and payment of rental sums of \$9,000 a month from April 2016 to 30 April 2018, being the date of completion of the sale of the Property.

6 Salim does not dispute that he had to pay the \$9,000 rent but claims that that he only had to pay rent from April 2016 to 8 January 2018, being the date at which he returned vacant possession of the Property to the plaintiffs. In addition, Salim raised two counterclaims against the plaintiffs. First, he claims for the loss of \$400,000 which he said would have been the surplus from the sale of the Property to the Initial Buyer at \$3.4m. Second, he claims for the renovation sums of \$286,066.10 he had incurred in renovating the Property.

7 I will first deal with Salim's counterclaim for the loss of \$400,000 allegedly arising from the plaintiffs' failure to accept the Initial Buyer's offer of \$3.4m. Salim claims that the Initial Buyer withdrew his offer to buy the Property at \$3.4m because the plaintiffs imposed unnecessary and unreasonable conditions for the sale. When Salim (through Rahim) found the Initial Buyer, parties agreed on 30 November 2018 that Salim would vacate the Property by 3 January 2018 to facilitate the sale of the Property to the Initial Buyer. Subsequently, on 1 December 2018, the plaintiffs demanded that Salim fulfil four additional conditions before they would issue an option to purchase the Property to the Initial Buyer ("the Additional Conditions"). The Additional Conditions were that:

- (a) Salim states in writing by 5.00pm on 4 December 2017 that he accepts the terms of the Settlement Agreement and will not contest the same in court;
- (b) Salim withdraw Summons No 3818/2017 by 5.00pm on 4 December 2017, with no order as to costs;
- (c) Salim vacate the Property by 5.00pm on 31 December 2017; and
- (d) All costs incurred in legal proceedings after the signing of the Settlement Agreement thus far be deducted from the sale proceeds payable to Salim.

8 Given the nature of the Settlement Agreement where Salim was entitled to sell the Property above the \$3m reserve price and retain the surplus sums, the Additional Conditions that affect this right must be by agreement. Salim did not agree to the fresh conditions, and it could possibly have affected his efforts to have the Property sold.

9 Mr George Pereira, appointed by the Legal Aid Bureau as counsel for Salim, invites the court to draw an inference of fact that the Actual Buyers are the same persons as the Initial Buyer(s) because the same property agent, Willi Ching ("Willi"), and his lawyer, Lim Lian Kee ("Lim") acted for both the Initial Buyer and Actual Buyers. When cross-examined, Ezzad said that he did not know the identity of the Initial Buyer who offered to buy the property at \$3.4m. Salim claims that the plaintiffs were in breach of the Settlement Agreement by not accepting the Initial Buyer's offer to purchase the property for \$3.4m.

10 Up to this point, Salim appears to have a case, but the problem is that we do not have the evidence from Rahim, Willi, or Lim, to identify who the Initial Buyer was, and why the Initial Buyer reneged on his offer to buy the Property from the plaintiffs at \$3.4m. Mr Pereira invites the court to infer that the Actual Buyers and the Initial Buyer(s) are the same persons, but the court should not infer this fact when it could have been readily established by calling the relevant witnesses. The burden of proof falls on Salim to show that but for the plaintiffs imposing the Additional Conditions, the Initial Buyer would not have reneged on his offer and the sale would have gone through (see *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 at [50] – [55]). For

example, this court needs to know how a change of three days to vacate had or could have hampered the agreement between the Initial Buyer and the plaintiffs. This uncertainty is exacerbated by the possibility that if the Initial Buyer(s) are not the same persons as the Actual Buyers, the reason they pulled out could be very different. The burden falls on Salim, and clearly, he has not discharged it.

11 The next issue is whether Salim is required to pay rent between the date at which he gave up vacant possession of the Property, 8 January 2018, to the date of completion of the sale of the Property, 30 April 2018. The disputed rental sum is \$33,632.88. The determination of this issue depends on the interpretation of the Settlement Agreement. The relevant clauses are as follow:

4. Failure to source for Purchaser by 31 December 2017:

a. In the event that [Salim] is unable to source for a Purchaser by 31 December 2017, the Parties agree that [Salim] shall purchase the Property at a sale price of \$3m. The option shall be accepted by [the plaintiffs] by the 1st week of January 2018 and completion shall take place within 3 months thereafter.

...

8. Monthly rental for the Property to be paid by [Salim] to [the plaintiffs]:

a. [Salim] agrees to pay the sum of \$9,000 per month as rental for the Property for the period commencing April 2016 to the date of Completion of the sale of the Property. For the period April 2016 to July 2017, [Salim] agrees that the sum of \$144,000 is due and payable to [the plaintiffs].

b. [Salim] agrees to carry on paying monthly rental in the sum of \$4,000 out of the monthly rental of \$9,000 to [the plaintiffs] commencing 1st August 2017 and thereafter on the 1st of every month to the date of Completion of the sale of the Property.

c. The balance monthly rental of S\$5,000 due from [Salim] to [the plaintiffs] from 1st August 2017 to the date of Completion of the sale of the Property be added to the amounts due from Party A to Party B at Completion.

...

10. Breach of paragraphs (4a) and 8(b)

a. [Salim] shall vacate the Property within 3 days and [the plaintiffs] shall be entitled to sell the Property as they deem fit.

...

c. [Salim] shall still be liable for all outstanding rental payments due under paragraph 8 above which shall be deemed as a debt due from [Salim] to [the plaintiffs].

12 Counsel for the plaintiffs, Ms Valerie Freda Ang, submits that cl 8 is clear and unambiguous, and that on its literal interpretation, Salim had to pay rent to "the date of Completion of the sale of the Property", which is 30 April 2018. In contrast, Mr Pereira submits that the parties had never intended

for Salim to continue paying rent up to the day of completion if he had vacated the Property before then. Further, relying on the *contra proferentum* rule, Mr Pereira argues that since the Settlement Agreement was drafted by the plaintiffs, any ambiguity must be resolved against them.

13 Ms Ang invites the court to make a finding that Salim had to pay rent till 30 April 2018 solely on the basis of cl 8, but cl 8 cannot be looked at in isolation. Clause 4(a) provides that if Salim is unable to find a buyer to purchase the Property by 31 December 2017, he has to purchase the Property. Salim breached cl 4(a) when the Initial Buyer withdrew from the sale, and he (Salim) decided not to purchase the Property. As a result, pursuant to cl 10(a), Salim had to vacate the Property within three days, which he eventually did on 8 January 2019. Clause 10(c) states that Salim shall be liable for "all outstanding rental payments" under cl 8. The issue is whether such "outstanding rental payments" includes the rent allegedly payable by Salim between 8 January 2019 to 30 April 2019, after he had vacated the Property.

14 On my reading of the Settlement Agreement, the parties seemed to have intended Salim to pay rent only if he was in possession of the Property. The following matters fortify my understanding of the parties' intentions:

(a) First, there was no dispute that Salim was allowed to stay on in the Property and was in effect renting the Property. Further, that the plaintiffs drafted cl 8 to refer to "the date of Completion of the sale of the Property" because they were uncertain when Salim would vacate the Property. As such, when Salim returned vacant possession of the Property to the plaintiffs, he was no longer renting the Property and the parties could not have intended for Salim to continue paying rent.

(b) Second, cl 10(a) states that Salim must vacate the Property, and that the plaintiffs can "sell the Property as they deem fit", without any specified timeline. The literal interpretation of cl 8 will result in Salim being obliged to continue paying rent till the Property is eventually sold, which could be months or even years after he has vacated the Property. This is unlikely what the parties would have intended.

(c) Third, any ambiguity in the Settlement Agreement will be construed against the maker of the document, the plaintiffs. Had the parties intended that Salim was to pay rent till the Property was sold regardless of whether he was in possession or not, that should have been specifically expressed in the Settlement Agreement.

15 The cause of action for the plaintiffs in this situation cannot be a claim for rent, but a claim in common law damages arising from Salim's breach of cl 4(a) of the Settlement Agreement. This has not been specifically pleaded by the plaintiffs, nor were there any submissions made in this regard. For the reasons above, I dismiss the plaintiffs' claim for the rental sum of \$33,632.88, and award the plaintiffs nominal damages in the sum of \$1,000.

16 The final issue is whether the plaintiffs are liable to reimburse or compensate Salim for the renovation expenses he had incurred, which amounted to the sum of \$286,066.10. Ms Ang submits that Salim's claim for renovation expenses was resolved at mediation and forms part of the Settlement Agreement. Mr Pereira asserts that no claim for renovation expenses was made in Suit 1266 and that the Settlement Agreement did not resolve this issue. The crux of Mr Pereira's argument is that as the renovations enhanced the value of the Property, it is inequitable for the plaintiffs to enjoy the benefit of the renovations without compensating Salim.

17 Correspondence between parties in mediation are confidential and made without prejudice. To

retain that confidentiality and to encourage such mediations, the court should therefore not delve into correspondence exchanged in the mediation process unless it is necessary, for example, to determine whether an agreement has been reached or if parties had agreed to disclose such communications (see *Ng Chee Weng v Lim Jit Ming Bryan* [2012] 1 SLR 457 at [94] – [97]). On the evidence provided, I find that although the issue of renovation expenses was discussed at mediation, it did not form part of the Settlement Agreement as the Settlement Agreement made no reference to any renovation expenses. Further, the fact that parties discussed this issue does not necessarily imply that it was resolved at mediation.

18 In any event, the burden of proof falls on Salim to show that there is a basis upon which the plaintiffs are liable to reimburse him for the renovation expenses that he had incurred. Salim has failed to do so for the following reasons:

(a) First, he did not plead any specific cause of action to be relied upon as the basis for his claim.

(b) Second, even if his claim can be charitably characterised as a claim in unjust enrichment, he must point to a recognised unjust factor underlying this claim (see *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [134]). This, he has not done.

(c) Third, he has failed to provide any proof that the renovations enhanced the value of the Property.

19 For the reasons above, the plaintiffs' claim for the rental sum of \$33,632.88 is dismissed and the plaintiffs are awarded nominal damages in the sum of \$1,000. Salim's counterclaim is dismissed.