

Brian Wesley Batie v Tan Boon Hock
[2001] SGHC 323

Case Number : Suit 86/2001
Decision Date : 23 October 2001
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Yap Teong Liang (Salem Ibrahim & Partners) for the plaintiff; G Raman and V Suriamurthi (G Raman & Partners) for the defendant
Parties : Brian Wesley Batie — Tan Boon Hock

Judgment

GROUND OF JUDGMENT

1. This is an appeal against my decision on 31 August 2001 giving judgment in the sum of \$51,525 against the Defendant, Tan Boon Hock ("Tan") in favour of the Plaintiff, Brian Wesley Batie ("Batie"). I also awarded interest on that sum at 6% per annum from the date of the writ and costs on the Subordinate Courts scale. Tan has appealed against my decision in respect of the sum of \$36,275 and I now give my written grounds of decision.

2. Between September 1999 and September 2000 Tan operated a food and beverage outlet known as the Sidewalk Caf & Pub located at 23 Cuppage Road ("the Premises"). This is part of a development known as Cuppage Terrace and was leased from Cuppage Terrace (1999) Pte Ltd ("the Landlord"). Tan had entered into a 3-year lease for the Premises commencing 1 September 1999 and ending on 31 August 2002 at a monthly rental which increased each year and at the material time was \$15,250.

3. Batie is a United States citizen and a musician by profession. He was employed by Tan as one of a band of musicians to provide entertainment at the Sidewalk Caf & Pub. However by around September 2000 Tan found it financially difficult to continue operating the outlet. He was in arrears of rent for three months. He decided to sell the business as a going concern to someone who could take over the lease of the Premises and pay him some money for the renovations he had put in just a year earlier. He cast about for a suitable party. In initial negotiations with Batie in September, they discussed the possibility of Batie, along with 2 others, taking over the business lock stock and barrel for \$75,000. However Batie decided not to go ahead. About a month later, when Tan still failed to find a buyer, Batie offered to take over the lease but he would not pay anything for the business.

4. On 18 October 2000, Batie and Tan entered into a written agreement ("the Agreement") in respect of the transaction. It was drafted by the parties themselves and states as follows:

1 Mr Tan agrees to transfer ownership and all rights to the lease of the property located at #23 Cuppage Terrace to Mr Batie, subject to approval by the landowners (Somerset International management office)

2 Mr Tan shall make all arrangements necessary to ensure the full remaining duration of the lease and all relevant licensing, i.e., that it shall not be terminated as a result of arrears, expiration, negotiation, or any other reasons existing before the transfer of ownership to Mr Batie.

3 Mr Tan shall be solely responsible for all debts, public and private, incurred during and only as a result of Mr Tan's operation of the premises previous to the

transfer of ownership.

4 Mr Tan undertakes to have all electrical wirings and fittings removed by a qualified electrician at his own costs. It shall then be the responsibility of Mr Batie to install his own electrical wiring and fittings at his own costs.

5 Mr Tan shall remove from the premises all equipment and furniture belonging to Mr Tan. Mr Tan shall complete the removal by maximum of one week after the date of novation, and shall bear the cost of removal for any equipment and furnishings currently belonging to Mr Tan, remaining on the premises after the date of novation.

6 Mr Tan shall be responsible for the rental period for the month in which this agreement is signed, and further agrees to bear the rent for a period of one month, beginning at the latest one week after the date of novation, and upon the completion of removal of all equipment, furniture, and fittings, to facilitate renovation of the premises by Mr Batie.

7 Mr Tan agrees to the use by Mr Batie of the current live entertainment, and liquor license until such time as the legal transfer is registered with the relevant authorities, and shall ensure that the licenses shall not expire before the transfers can be completed.

8 Mr Batie agrees to assume all responsibility for conforming to the conditions of the licensing, and agrees to indemnify Mr Tan from any fines, breaches, and/or other problems that might occur during Mr Batie's operation of the premises.

9 Mr Batie shall show proof that all required license applications be submitted to the relevant authorities within two (2) weeks after the date of novation.

10 Within one week after the signing of the novation agreement by all concerned parties and the witness, Mr Batie shall be free to use the premises for any and all legal purposes approved by the landowner, and Mr Tan shall have no additional claim to the property.

11 Mr Batie shall assume all responsibility for all debts, public and private, incurred during and only as a result of Mr Batie's operation of the premises.

12 In the event of FORCE MAJURE [sic], neither party shall be responsible for the termination of this agreement due to act of government, or act of nature.

13 The commencement of this agreement is to be considered valid on the date of the signing by representatives of both parties and the witness.

14 This agreement, and all terms and conditions inclusive, can only be altered, or cancelled without further liability by mutual agreement of both parties.

15 All terms and conditions listed in this agreement shall apply subject to conformance with the laws and regulations of the country of Singapore.

5. Batie had earlier, on 16 September, registered a partnership in the name of "Mr. B Restaurant and

Music Emporium" of which he and one Mohd Nassir Khan Bin Ali Khan ("Nassir") were the partners.

6. The Landlord approved the proposed novation of the lease to Batie. Tan and Batie signed the Novation Agreement on 23 October 2000. There appears to be some dispute as to when the Landlords agent signed the Novation Agreement and therefore when it came into effect. This has a bearing on the operation of the Agreement between Batie and Tan. However this problem is obviated by the confirmation by counsel for Tan that the hand-over date under clause 10 of the Agreement was 1 November 2000.

7. After the signing of the Novation Agreement on 23 October, with only a week left to the hand-over, Tan tried to recover as much as he could by selling the furniture and equipment of his business. Tan advertised in the Straits Times on 30 October a "closing down sale" at the Premises of restaurant and pub equipment. There appears to be some negotiation between Batie and Tans sister, Rosy, over the sale of such equipment and furniture to Batie, but nothing came out of that. According to Rosy, they managed to sell most of the items on that day to people who responded to the advertisement.

8. The dispute between the parties arose out of the events that occurred at the Premises from about 6 pm on 30 October until 6 pm on 1 November 2000. Tan engaged a removal contractor who went to the Premises with four workers. According to Tan, they removed *"the equipment, furniture, fittings, electrical wirings and other items that were installed by me during the period of my tenancy"*. According to Batie, they wreaked havoc in the Premises. He listed the following acts in his affidavit:

- (a) removal of the fire doors from the door frames;
- (b) cutting of the electrical wirings throughout the premises without a qualified electrician;
- (c) damage of the automatic fire roller shutters;
- (d) removal of the roller shutter fire door;
- (e) removal of the fire proof ceiling;
- (f) removal of the woodworks from the walls thereby leaving large holes in the underlying bricks;
- (g) removal of the electrical distribution board;
- (h) failure to replace the original doors and windows as per Tenancy Agreement;
- (i) removal of all fire safety equipment, including fire extinguishers and the fire hose;
- (j) damage to the inlet pipes by bending so as to make replacement of the fire hose impossible;
- (k) tearing and bending of the latch to the fire door located at the first storey, as if with a crowbar, making any replacement impossible;
- (l) disabling the fire roller shutter located on the first and second storeys by bending the roller tracks out of shape, making repair and operation difficult;
- (m) failure to remove the electrical wiring as provided in the Agreement;
- (n) removal of the fire-proof ceiling on the ground floor, revealing open holes that had been cut into the floor of the second storey;
- (o) removal of the ceiling in the rear room of the second storey and punching of large holes into the plasterboard walls;
- (p) damage to the walls of the front rooms, both upstairs and removal of a windowpane;
- (q) cutting off of the water pipes and stuffing of materials into the open ends thereby disabling them;
- (r) damage to and removal of the fire boards under the stairwell;

(s) removal of the main electrical distribution box and cutting of the wiring so as to make installation of a replacement distribution box impossible without first removing the wiring of the entire premises.

(t) removal of the toilet sensors and flush switches and the leaving behind of faeces and urine in the both toilets on second storey.

9. Batie produced photographs of the interior of the Premises which substantiate many of his allegations. Tan did not really deny them; rather he maintained that he was entitled to remove those items under the agreement between them. Batie on the other hand said that the understanding was that Tan would leave him the Premises in good repair to enable him to begin business quickly and generate a good cash flow early. Tan on the other hand claimed that Batie had insisted on his removing everything and reinstating the Premises to the state in which he had first obtained it. Tan had said that he had obtained the Premises in a very bad state and had spent a lot of money doing it up. I found Tans evidence incredible and do not believe him. I accept Baties evidence that Tan had left the Premises in a very bad state of disrepair.

The Agreement, which spells out the obligations of the parties with respect to the hand-over, clearly supports Baties version that the common intention was for him to be able to commence business as quickly as possible.

10. In any event, that is also the tenor of the terms of the written agreement. The first limb of clause 6 provides that Tan is responsible for the rent of the Premises in the first month of Baties tenure, i.e. for the month of November 2000. The second limb of clause 6 obliges Tan to facilitate the renovation of the Premises by Batie upon the completion of removal of all equipment, furniture and fittings. Clause 7 obliges Tan to agree to Baties use of the live entertainment and liquor licences until their transfer could be effected. I would hold that there is an implied term in the Agreement that Tan should carry out the removal of his equipment, furniture, electrical wiring and fittings in a reasonable manner so as to facilitate Batie to start up his business quickly.

11. The Agreement also sets out what Tan is entitled to remove. Clause 4 requires Tan to have all *"electrical wirings and fittings removed by a qualified electrical electrician"*. Tans counsel submitted that the noun "fittings" in this clause is not limited by the adjective "electrical" which only applies to "wirings". This point can be easily disposed of by the fact that the clause specifies that such fittings are to be removed by a qualified electrician. I cannot see why, if the parties had intended to mean all types of fittings, non-electrical fittings such as bathroom fittings should need to be removed by a qualified electrician. Apart from electrical wiring and electrical fittings, clause 5 states that Tan is to remove all equipment and furniture belonging to him. However there is nothing in the Agreement that says that Tan is entitled to remove any doors, ceiling, etc. or to cause damage to any part of the Premises. Also, in failing to completely remove the electrical wiring, Tan had breached clause 4.

12. Hence I held that Tan was in breach of the Agreement in the following manner:

- (i) clause 4, in not removing the electrical wiring;
- (ii) clause 6, in not paying the November 2000 rent;
- (iii) clause 6 in failing to facilitate renovation of the Premises by Batie;
- (iv) in removing the fire doors, ceiling, etc in breach of the Agreement in that there is no specific provision that entitles him to remove such items; and
- (v) in causing damage to the Premises, thereby breaching an implied term of the Agreement that Tan should carry out the removal of his equipment, furniture, electrical wiring and electrical fittings in a reasonable manner.

13. Baties alternative claim was in trespass. Although Tan was to have handed over the premises

on 1 November, he failed to do so until 6 pm on that day and had therefore trespassed on the Premises. I held that in the course of such trespass, they had caused at least part of the damage to the Premises that Batie had proved.

14. I turn next to the question of damages. Before he could commence his own renovations Batie had to rectify the damaged Premises. Although Batie made a claim for the costs of rectification, he failed to prove that he incurred such costs. The contractor who carried out the repair works was instructed by the Landlord. Batie had not paid him a cent for the repair works although, it would appear, neither did the Landlord. What happened was that Batie had also engaged him to undertake the renovation works on the Premises. When the contractor failed to collect payment from the Landlord in respect of the rectification works, he asked Batie for payment. But it was clear from the contractors evidence that it was the Landlord and not Batie who was liable to him in respect of those works. In the event, I found that Batie had not incurred any expenses in respect of rectification works.

15. However I found that the repair works caused a delay in the commencement of Baties business operations. Batie had originally intended to open in mid-November but eventually opened for business in late January or February 2001. I found that part of this delay was due to other factors. On the basis of the evidence before me I found the delay caused by Tan to be for a period of one and a half months. This is for the carrying out of the rectification works as well as need to obtain approval from the Fire Safety Bureau on account of the removal of the fire doors, fire-rated ceiling and other fire safety equipment. Had Batie carried out these activities with reasonable speed, I found that he could have completed everything within 2 months from 1 November 2000.

16. Batie claimed for loss of profit caused by the delay. However I was not satisfied from the evidence that he would be able to make much profit. In my view, the evidence points to a situation where he would probably have broken even and I so held. That being the case, his losses in respect of the delayed opening would pertain to the reasonable expenses that he had to incur in order to preserve his ability to open. I found that this would be:

- (1) staff salaries for one and a half months;
- (2) rental of the Premises for one and a half months:

17. In respect of staff salaries, Batie produced evidence of payment to a skeleton crew that he had to maintain. Given the uncertainties at the time, I found these payments were reasonably incurred, except for payments to his partner, Nassir which I disallowed. The total for the one and a half months comes to \$13,400.

18. In respect of rental of the Premises, the total for the one and a half months comes to \$22,875.

19. There is also a claim under the first limb of clause 6 of the Agreement. This provides that Tan is to bear the rental for the month of November 2000. Tan had failed to pay this to the Landlord. However at the trial Tan admitted to this part of the claim and there is no appeal against this part of my decision.

20. In the event, I gave judgment for Batie in the sum of \$51,525 plus interest at 6% per annum from the date of the writ. In view of the quantum, I awarded costs on the Subordinate Courts scale.

Sgd:

LEE SEIU KIN
JUDICIAL COMMISSIONER

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