

IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 27

Originating Application No 1147 of 2023

Between

- (1) Hoon Kee Meng (Hong
Qiming)
- (2) Kim San Leng Realty Pte Ltd

... *Claimants*

And

Dash Living Pte Ltd

... *Defendant*

Originating Application No 1207 of 2023

Between

Dash Living Pte Ltd

... *Claimant*

And

- (1) Hoon Kee Meng (Hong
Qiming)
- (2) Kim San Leng Realty Pte Ltd

... *Defendants*

EX TEMPORE JUDGMENT

[Contract — Contractual Terms — Unilateral mistake rectification]

[Contract — Contractual terms — Interpretation of contractual terms]

[Contract — Contractual terms — Subject to contract clause]

TABLE OF CONTENTS

INTRODUCTION.....	1
UNDISPUTED FACTS	2
THE PARTIES' CASES	7
ISSUE TO BE DETERMINED	8
MY DECISION	8
THE TENANT'S RIGHTS UNDER CL 15	9
INCORPORATION OF LOI VIA CL 17.4 OF THE TENANCY AGREEMENT.....	16
THE INDEPENDENT LEGAL EFFECT OF THE LOI	18
CONCLUSION	20

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Hoon Kee Meng and another
v
Dash Living Pte Ltd and another matter

[2024] SGHC 27

General Division of the High Court — Originating Applications Nos 1147
and 1207 of 2023

Tan Siong Thye SJ

30 January 2024

30 January 2024

Tan Siong Thye SJ:

Introduction

1 These are two applications – HC/OA 1147/2023 (“OA 1147”) and HC/OA 1207/2023 (“OA 1207”) – arising out of the same tenancy agreement dated 17 December 2021 (the “Tenancy Agreement”) between the parties.¹

2 In OA 1147, the claimants in that action, whom I shall henceforth refer to as the “Landlord”, seek a declaration against the defendant, whom I shall henceforth refer to as the “Tenant”, that the Tenancy Agreement does not give the Tenant the option to renew the tenancy for another 24 months. The Landlord also alleges that the parties did not reach an agreement on the terms of the

¹ See Affidavit of Liu Hang for HC/OA 1147/2023 dated 8 December 2023 (“Aff TT No. 1”) at pp 99–146.

renewal of the tenancy. Therefore, the Landlord argues that the Tenant is to vacate the leased premises upon the expiry of the Tenancy Agreement on 31 January 2024.

3 Conversely, in OA 1207, the Tenant applies for a declaration against the Landlord that the Tenancy Agreement provides the Tenant the right to renew the tenancy for a term of 24 months. The Tenant alleges that this right was exercised by the Tenant and therefore the Landlord is to provide the Tenant a renewal tenancy agreement.

4 After considering the affidavits and written submissions filed by the parties, as well as the oral submissions made, I find that the Tenancy Agreement does indeed grant the Tenant the right to renew the tenancy for a period of 24 months at a renewed monthly rent capped at 10% above the current monthly rent. I also find that this right was validly exercised by the Tenant on 14 September 2023. Accordingly, I dismiss the Landlord’s application in OA 1147 and grant the Tenant’s application in OA 1207.

Undisputed Facts

5 I shall now set out the key undisputed facts. Mr Hoon Kee Meng (“Mr Hoon”), the first claimant in OA 1147 and first defendant in OA 1207, is the proprietor of a 6-storey building along McKenzie Road (the “Property”).² Mr Hoon is also the sole shareholder and director of Kim San Leng Realty Pte Ltd (“Kim San”),³ the second claimant in OA 1147 and second defendant in OA 1207. As I have stated earlier, I shall refer to both Mr Hoon and Kim San

² Affidavit of Hoon Kee Meng (Hong Qiming) dated 8 November 2023 (“Aff LL No. 1”) at para 4.

³ *Ibid.*

as the “Landlord” since their interests are common in these applications. Dash Living Pte Ltd, the Tenant, presently operates a hotel on the Property.⁴

6 In or around November 2021, Mr Liu Hang (“Mr Liu”), a director of the Tenant, signed a letter of intent (“LOI”) on behalf of the Tenant setting out the key terms of the Tenant’s offer to rent the Property from the Landlord.⁵ The LOI was accepted by Mr Hoon, who signed the acceptance portion of the LOI on behalf of Kim San.⁶ I pause to note that while Mr Liu’s and Mr Hoon’s accounts of how the LOI was prepared, signed and amended may be different,⁷ both Mr Liu and Mr Hoon accept that they had signed the latest version of the LOI.⁸

7 I shall reproduce two particular clauses of the LOI which are relevant to the pivotal issue of whether the parties intended for the Tenant to have an option to renew the tenancy for 24 months in the Tenancy Agreement. First, cl 2 of the LOI states:⁹

2. **Option to Renew:** The Tenant shall have the option to renew the lease, at the expiration of the term, for a further term of 24 months, by giving the Landlord 03 month’s written notice.

I shall refer to cl 2 of the LOI as the “24 Months Renewal” clause. Second, cl 15 of the LOI states:¹⁰

⁴ Aff TT No. 1 at para 9.

⁵ Aff TT No. 1 at para 13.

⁶ Aff LL No. 1 at para 10.

⁷ Affidavit of Liu Hang for HC/OA 1207/2023 dated 8 December 2023 (“Aff TT No. 2”) at paras 14–18; Affidavit of Hoon Kee Meng (Hong Qiming) dated 22 December 2023 (“Aff LL No. 2”) at paras 5–7.

⁸ Aff TT No. 2 at para 18; Aff LL No. 2 at para 8.

⁹ Aff TT No 1 at p 46.

¹⁰ Aff TT No 1 at p 47.

15. Subject to Contract: The lease of the Property is subject to a Tenancy Agreement. The Landlord and Tenant shall sign the Tenancy Agreement with terms and conditions agreed by both parties within sixteen (16) days of the Acceptance of this Letter Of Intent / upon receipt of approval of change of use for the premises from the relevant authorities, failing which the good faith deposit submitted herein shall be refunded to the Tenant and thereafter this Letter Of Intent shall be treated as null and void and neither party shall have any claims against the other. In the event the Tenant fails to execute the Tenancy Agreement by the said date after both parties agree to the terms and conditions of the Tenancy Agreement, the good faith deposit submitted herein shall be forfeited to the Landlord and thereafter this Letter Of Intent shall be treated as null and void and neither party shall have any claim against the other. Legal Fee for Tenant capped at \$2,250.

I shall refer to cl 15 of the LOI as the “Subject to Contract” clause.

8 Following the signing of the LOI, a draft of the Tenancy Agreement was prepared by the Landlord’s solicitors.¹¹ This draft was forwarded to the Tenant on 24 November 2021.¹² After some negotiations between the Tenant and the Landlord’s solicitors, the Tenancy Agreement was executed by the parties on 17 December 2021.¹³ The agreed monthly rent under the Tenancy Agreement was \$45,000.¹⁴

9 A number of clauses of the Tenancy Agreement are particularly relevant for the purposes of these applications. First, cl 15 of the Tenancy Agreement which details the right of renewal, states:¹⁵

15. Renewal

There shall be right of renewal subject to Tenant giving at least

¹¹ Aff TT No. 2 at para 19; Aff LL No. 1 at para 10.

¹² Aff TT No. 2 at para 19; Aff LL No. 1 at para 15.

¹³ Aff TT No. 2 at paras 21, 23; Aff LL No. 1 at para 16.

¹⁴ See Aff TT No. 1 at p 103.

¹⁵ Aff TT No 1 at p 137.

three (3) months' notice prior to expiration of lease and the renewed rent shall be capped at ten percent (10%) above current Rent.

Related to this, cll 6A and 6B of Schedule 1 of the Tenancy Agreement notes the following:¹⁶

- | | | |
|-----|---|-----|
| 6A. | Option to Renew (<i>clause 15</i>) | Nil |
| 6B. | Renewal Condition(s) (<i>clause 15</i>) | N A |

Finally, cl 17.4 of the Tenancy Agreement is a whole of agreement clause and it states:¹⁷

The covenants, provisions, terms and agreements herein and in the letter of offer addressed to the Tenant (and accepted by the Tenant) cover and comprise the whole of the agreement between the Parties and the Parties declare that no further or other covenants, agreements, provisions or terms whether in respect of the Demised Premises of the Building or the other tenants thereof or otherwise shall be deemed to be implied herein or to arise between the Parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by either party hereto to the other on or prior to the execution hereof and the existence of any such implication or collateral or other agreement is hereby negated.

As an aside, cl 17.4 is not well-drafted and extremely convoluted, with many separate clauses forming a single composite long sentence. The clause could have very easily been split up into individual sentences to improve comprehensibility.

10 It is undisputed that cll 15 and 17.4 of the draft of the Tenancy Agreement were not amended during the negotiations by the parties and these

¹⁶ Aff TT No 1 at p 103.

¹⁷ Aff TT No 1 at p 138.

provisions remained in their original form in the executed version of the Tenancy Agreement.¹⁸

11 The Tenant then commenced its occupation of the Property.

12 Sometime in April 2023, discussions about the renewal of the Tenancy Agreement commenced between the parties.¹⁹ The Landlord proposed to renew the tenancy at a revised monthly rent of around \$76,000 on the basis that it had been offered that amount by a third party.²⁰ Sometime in June 2023, the Tenant realised that cl 15 of the Tenancy Agreement stipulates that the renewed monthly rent is to be capped at 10% above the current monthly rent of \$45,000.²¹ This was then brought to the attention of the Landlord’s agent.²² However, the Landlord rebuffed such assertion on the basis that cl 15 of the Tenancy Agreement did not operate since there was no agreement on the renewal period, and therefore a new rate and term of rental had to be negotiated.²³

13 Against the backdrop of these negotiations, Mr Keefe Tan (“Mr Tan”), the general manager of the Tenant, sent an email to Mr Hoon on 14 September 2023, stating: “With reference to Clause 15 in the Tenancy Agreement, [the Tenant] will exercise our right to renew for another 2 years at a renewed rent capped at 10% above current rent.”²⁴ In response, Mr Hoon

¹⁸ Tenant’s Written Submissions dated 12 January 2024 (“TT’s Subs”) at para 18; Landlord’s Written Submissions dated 12 January 2024 (“LL’s Subs”) at para 17.

¹⁹ Aff TT No. 2 at para 27; Aff LL No. 2 at para 17.

²⁰ Aff LL No. 2 at paras 17–18

²¹ Aff TT No. 2 at para 30.

²² *Ibid.*

²³ Aff TT No.2 at para 31; Aff LL No. 1 at paras 22–23.

²⁴ Aff TT No 2 at para 32, p 249; Aff LL No. 1 at para 23.

effectively denied that cl 15 of the Tenancy Agreement had the effect of allowing the Tenant to renew the tenancy in this manner.²⁵ With no resolution over how the tenancy could be renewed, the parties filed the present applications.

14 It is also undisputed that the current tenancy ends on 31 January 2024.

The parties' cases

15 To prove its case, the Landlord argues first, that cl 15 of the Tenancy Agreement is uncertain and unenforceable as it omits the period of renewal and other terms of the renewed tenancy.²⁶ Second, the Landlord submits that the Tenant cannot rely on the LOI for the right to renew the tenancy for 24 months.²⁷ Hence, the Landlord alleges that in the absence of any *new* agreement with the Tenant, there is no valid renewal of the tenancy and the Tenant has to vacate the Property on 31 January 2024.

16 In contrast, the Tenant argues first, that cl 15 of the Tenancy Agreement should be rectified in equity on the basis of a unilateral mistake on the part of the Tenant, in order to reflect that the Tenant has the option to renew the tenancy for 24 months.²⁸ Second, the Tenant submits that cl 17.4 of the Tenancy Agreement incorporates the terms of the LOI, including the 24 Months Renewal clause.²⁹ Accordingly, the Tenant did exercise its right to renew the tenancy on 14 September 2023. Therefore, the Landlord is obliged to accept a new renewal

²⁵ Aff TT No. 2 at p 248.

²⁶ LL's Subs at paras 29(a), 30–42.

²⁷ LL's Subs at paras 29(b)–(c), 43–67.

²⁸ TT's Subs at paras 10(a), 26–38.

²⁹ TT's Subs at paras 10(b), 39–49.

of the tenancy for 24 months at a renewed monthly rent not more than 10% above the current monthly rent.

Issue to be determined

17 The central issue to both applications is whether the Tenancy Agreement provides the Tenant a right to renew the lease for a period of 24 months at a renewed monthly rent of not more than 10% above the current monthly rent of \$45,000, *ie* \$49,500.

My Decision

18 I would like to state that the court must respect the sanctity of the contract entered into by the parties. It is not the business of the court to change the contractual terms of the parties to suit the situation if the parties had clearly intended to have those contractual terms.

19 In order to determine the central issue in this case, I shall refer to the principles of contractual interpretation which are well-established and trite. As summarised by the Court of Appeal in *Leiman, Ricardo and another v Noble Resources Ltd and another* [2020] 2 SLR 386 at [59], citing *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 at [19]:

(a) The starting point is that the court looks to the text that the parties have used: *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2].

(b) The court may have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties: *Zurich Insurance (Singapore) Pte Ltd v B-*

Gold Interior Design & Construction Pte Ltd [2008] 3 SLR(R) 1029 at [125], [128] and [129].

(c) The court has regard to the relevant context because it then places itself in “the best possible position to ascertain the parties’ objective intentions by interpreting the expressions used by the parties in the [contract] in their proper context”: *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [72].

(d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear: *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31].

20 For completeness, I shall also state the relevant principles of contextual interpretation. The Court of Appeal has summarised the contextual approach to contractual interpretation in *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30] as follows:

... the purpose of interpretation is to give effect to the objectively ascertained expressed intentions of the contracting parties as it emerges from the contextual meaning of the relevant contractual language. Embedded within this statement are certain key principles: (a) first, in general both the text and context must be considered ...; (b) second, it is the *objectively ascertained intentions of the parties* that is relevant, not their subjective intentions ...; and (c) third, the object of interpretation is the verbal expressions used by the parties and so, *the text of their agreement is of first importance* ... [emphasis in original]

The Tenant’s rights under cl 15

21 I shall first deal with cl 15 of the Tenancy Agreement. It is apparent that the clause itself does not *expressly* provide for a right to renew for 24 months, although it allows the Tenant to renew the Tenancy Agreement at a new monthly rent of not more than 10% above the current monthly rent. The parties do not dispute this.

22 However, in my view, looking at the relevant context that is clear and obvious to both parties to ascertain the objective intentions of the parties, I find that cl 15 does provide the Tenant the right to renew the lease for a period of 24 months. This is for three reasons. First, cl 15 itself presupposes that the renewed tenancy will be for a fixed period. This is because if the period of renewal will need to be negotiated and agreed upon, it will always be open to the Landlord to simply reject any proposal by the Tenant in order to get around the rent cap, especially if the market rent has increased significantly like in this case. Leaving the period of the renewal of the Tenancy Agreement open could not have been the intention of the parties, particularly the Tenant, when it entered into the Tenancy Agreement in 2022. In 2022, nobody could predict whether the market rent for the Property would increase or decrease after the expiration of the Tenancy Agreement in January 2024.³⁰ If the market rent has reduced, the Landlord will expectedly want the Tenant to renew the tenancy for another two years. If the market rent has increased, the Landlord will instead want to increase the monthly rent, as in this case. This is exactly what Mr Hoon recognised in stating: “Of course, if by the time of the renewal, the market rate for the rental increases significantly or is on an uptrend, it will not make any commercial sense, and I should not be bound to lease the Property to [the Tenant] with the rental cap for another 24 months”.³¹ This is surely what the Landlord hopes when the market rent goes up after the expiry of the Tenancy Agreement, but in my view, this cannot be the Tenant’s objectively ascertainable intention at the time when the Tenancy Agreement was entered into. The inclusion of cl 15 into the Tenancy Agreement was evidently to give the parties the opportunity to renew the tenancy at a controlled rent and to

³⁰ See Aff LL No. 2 at para 16.

³¹ Aff LL No. 1 at para 11.

provide some certainty regarding the duration of the renewed tenancy agreement.

23 Mr Hoon has stated in his affidavit that he instructed the Landlord’s solicitors not to mention the duration of the renewed tenancy agreement in cl 15 of the Tenancy Agreement.³² The surreptitious omission to state the duration of the renewed tenancy was not brought to the attention of the Tenant.³³ This suggests that the Landlord intended to nullify the effect of cl 15 of the Tenancy Agreement if the monthly rent goes up at the expiration of the Tenancy Agreement so that he “would not be bound to lease the Property to [the Tenant] with the rental cap for another 24 months”. This sinister intention of the Landlord is unethnical and inequitable.

24 Second, the parties, especially the Landlord, was cognisant that the renewed tenancy would have been for a fixed period when the parties signed the LOI. The parties had negotiated the terms of the rental cap. It is undisputed that as a result of the negotiations, the rental cap was revised from 5% to 10% of the current monthly rent.³⁴ Since the terms of renewal were discussed and negotiated these suggest that cl 15 should have a fixed term of renewal with a rental increase not exceeding 10% of the current monthly rent like in the LOI.

25 Third, seen against the context of the LOI, the renewal is to be for a period of 24 months. This was important to the Tenant and this was expressly stated in the LOI which was signed and agreed to by both the parties. The Landlord had not changed the terms of the renewal of the tenancy in the LOI.

³² Aff LL No. 1 at para 11; Aff LL No. 2 at para 17.

³³ TT’s Subs at para 19.

³⁴ Aff TT No. 2 at para 15; Aff LL No. 1 at para 11.

The Landlord alleges that Mr Hoon had expressly instructed the Landlord's solicitors, who were drafting the Tenancy Agreement, to exclude the period of renewal because it was not something that the Landlord could agree to.³⁵ However, neither this reasoning nor the fact that the term would not be included in the Tenancy Agreement was communicated to the Tenant. This veiled and deliberate action of the Landlord in not bringing to the attention of the Tenant the exclusion of the renewal period in the Tenancy Agreement lacks candour and leaves much to be desired. I wish to reiterate that the Landlord had signed the acceptance to the LOI, which stated, *inter alia*, the renewal term to be 24 months. Mr Hoon explains that his signing of the LOI did not represent his acceptance of the terms of the LOI, and rather he only signed the LOI to trigger the timeline for the preparation of the Tenancy Agreement.³⁶ I find this explanation to be disingenuous. If Mr Hoon truly did not accept the terms of the LOI, he should not and did not have to sign the LOI. Alternatively, he could have removed the period of the renewal of the tenancy agreement in the LOI before he signed. Additionally, Mr Hoon's position is inconsistent with his conduct: if he was truly of the view that the act of signing did not represent acceptance of the terms of the LOI, then there was no need to negotiate and amend the terms of the LOI to make it suitable for the Landlord. Instead, there was more than one round of amendments to the LOI to refine its terms.³⁷ In the same vein, if Mr Hoon had issues with the renewal period of 24 months, he should have made his views known at the time of negotiating the LOI so that the parties could address any disagreement in the terms before signing the LOI.

³⁵ LL's Subs at para 33.

³⁶ Aff LL No. 2 at para 8.

³⁷ See Aff TT No. 2 at paras 15–18.

26 It appears the Landlord is now trying to nullify the effect of cl 15 that grants the Tenant the option to renew the tenancy because a prospective tenant has offered the Landlord a monthly rent of \$76,000 which is significantly much more than the current monthly rent of \$45,000 or the maximum renewed monthly rent of \$49,500. This is indeed reflected in Mr Hoon's comments where he prefaced the assertion that the Landlord should not have to be bound by a rent cap with the hypothetical that the market rate for rental has increased substantially. Plainly, it is not open to the Landlord to renege on the Tenancy Agreement it had earlier agreed upon.

27 Notwithstanding that the LOI includes the Subject to Contract clause, the court can still consider the LOI in this particular case to ascertain the intention of the parties when they signed the LOI and the Tenancy Agreement. It is undisputed that the parties signed the LOI. Therefore, the Landlord accepted the terms of the renewal of the tenancy which include, *inter alia*, that it was for a further period of 24 months. Accordingly, I find that the parties did indeed intend for the renewed tenancy to be for a period of 24 months.

28 In the alternative, I agree with the Tenant's submission that unilateral mistake rectification should apply to cl 15 of the Tenancy Agreement. In *Sheng Shiong Supermarket Pte Ltd v Carilla Pte Ltd* [2011] 4 SLR 1094, Andrew Ang J (as he then was) summarised the requirements for unilateral mistake rectification at [67]:

First, the non-mistaken party must have actual knowledge of the mistaken party's intentions and of the mistake, and this includes wilfully shutting one's eyes to the obvious. Second, the non-mistaken party must have failed to draw the mistaken party's attention to the mistake. Third, the mistake must be such that the non-mistaken party would derive a benefit, or the mistaken party would suffer a detriment, if the inaccuracy in the document were to remain uncorrected. It is not necessary that the conduct of the non-mistaken party amounts to fraud.

All that is necessary is that the knowledge or conduct of the non-mistaken party must be such as to make it inequitable for that party to object to rectification.

29 In the present case, Mr Hoon (the non-mistaken party) must have known that, based on the LOI, the Tenant (the mistaken party) did intend to contract for a 24-month renewal option which Mr Hoon had agreed. Notwithstanding this, Mr Hoon gave instructions to the Landlord’s solicitors not to mention the period of renewal of the Tenancy Agreement.³⁸ This was not brought to the attention of the Tenant, who must have thought that the duration of the renewed tenancy would be for 24 months like what was agreed in the LOI.³⁹ If this omission in the Tenancy Agreement was brought to the attention of the Tenant, in all probabilities, it would not have agreed as the parties had earlier agreed in the LOI to a 24-month renewed tenancy agreement with a rental increase not exceeding 10% of the current monthly rent. The ominous conduct of the Landlord cannot be condoned. This mistake would effectively grant the Landlord the ability to avoid the rent cap that would apply with respect to the renewed tenancy, thereby granting a benefit to it. Looking at this from another perspective, the Tenant would suffer a detriment in the form of the loss of the certainty to renew its tenancy for an agreed period at an agreed rent of not more than 10% of the current rent. Thus, in my view, the requirements for unilateral mistake rectification are met, and I accept the Tenant’s submission that unilateral mistake rectification should apply to cl 15 of the Tenancy Agreement.

30 Finally, I am not persuaded by the Landlord’s argument that there is no option for renewal of the Tenancy Agreement as cll 6A and 6B of Schedule 1 of the Tenancy Agreement, state “Nil” and “NA” in reference to “Option to

³⁸ Aff LL No. 1 at para 11; Aff LL No. 2 at para 17.

³⁹ TT’s Subs at para 19.

Renew (clause 15)” and “Renewal Condition(s) (clause 15)” respectively.⁴⁰ This is a mischievous submission as there was clearly an option to renew the Tenancy Agreement. The Landlord deliberately omitted to mention the period of the renewed tenancy in cl 15 of the Tenancy Agreement. Further, the Tenancy Agreement was prepared by the Landlord’s solicitors.⁴¹ Putting aside the issue of the renewal term and simply looking at the express text of cl 15 of the Tenancy Agreement, cll 6A and 6B of Schedule 1 of the Tenancy Agreement would still be inaccurate as they do not acknowledge the facts that there *is* a right to renew, and that the rent cap of 10% of the current monthly rent and the notice of three months prior to the expiration of the lease *are* renewal conditions.

31 I shall address the Landlord’s related argument that cl 15 is uncertain and unenforceable because it omitted to expressly state what the tenure of the renewal is and what the other terms of the renewed tenancy are.⁴² I do not agree with the Landlord that cl 15 is uncertain to this effect and should therefore be unenforceable. When faced with a term in a contract that is not clear on its face as to its meaning or effect, the court is not to simply disregard it and condemn it as being unenforceable. Instead, an attempt at interpretation must be undertaken. To address the cases cited by the Landlord, namely *Jewellery Industries (S) Pte Ltd v Sintat Rent-a-Car Pte Ltd* [1993] 1 SLR(R) 744 (“*Jewellery Industries*”) and *Radha Properties Pte Ltd v Lim Poh Suan and others* [2023] 4 SLR 728 (“*Radha Properties*”),⁴³ I note that while those cases involved a tenancy renewal clause as well, the clauses there were materially

⁴⁰ LL’s Sub at para 58.

⁴¹ Aff TT No. 2 at para 19; Aff LL No. 1 at para 10.

⁴² LL’s Subs at paras 29(a), 30–42.

⁴³ LL’s Subs at paras 36–40.

different compared to cl 15 in the Tenancy Agreement before me. In *Jewellery Industries*, the renewal clause included the phrase “on such terms and conditions as may be agreed to between the parties”. In that case, the rent was also expressly stated to be subject to renegotiation. Both these features, which led to the court there to conclude that the renewal clause was uncertain, are absent in cl 15 of the Tenancy Agreement. In *Radha Properties*, the tenant there filed an application for the court to provide a machinery to determine the “prevailing market rent”, as stipulated in the renewal clause, because the parties there could not come to an agreement on the same. This is quite unlike the present case where, according to my findings, the term of renewal was not uncertain and instead fixed at 24 months. Hence, there is no need for the court to undertake an exercise of ascertaining a figure to be mutually agreed, unlike *Radha Properties*.

Incorporation of LOI via cl 17.4 of the Tenancy Agreement

32 Even if cl 15 of the Tenancy Agreement cannot be understood to grant the Tenant a right to renew the tenancy for a period of 24 months, I find that cl 17.4 of the Tenancy Agreement operates to import the terms of the LOI, including the 24 Months Renewal clause so as to give clarity to the Tenancy Agreement and the parties’ intention. To recapitulate, cl 17.4 of the Tenancy Agreement states: “The covenants, provisions, terms and agreements herein and *in the letter of offer addressed to the Tenant (and accepted by the Tenant)* cover and comprise the whole of the agreement between the Parties ...” [emphasis added]. It is undisputed that a letter of offer to the Tenant *per se* did not exist in this case.⁴⁴ Nevertheless, applying a contextual approach, I find that the phrase “letter of offer” in cl 17.4 should be read as referring to the LOI. There is no other letter that the parties must have intended to refer to other than the LOI.

⁴⁴ TT’s Subs at para 43; LL’s Subs at para 63.

33 The Landlord submits that cl 17.4 does not apply in this case because there was no letter of offer addressed to the Tenant and accepted by the Tenant.⁴⁵ I disagree with this submission. The “letter of offer” mentioned in cl 17.4 must only refer to the LOI. This must have been the intention of the parties at that time. As correctly pointed out by the Tenant, s 97 of the Evidence Act 1893 (2020 Rev Ed) (“EA”) operates to allow extrinsic evidence to be used where a document is meaningless in reference to non-existing facts. Section 97 of the EA states:

When language used in a document is plain in itself, but is meaningless in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration

A conveys to *B* by deed “my plantation in Penang”.
A had no plantation in Penang, but it appears that *A* had a plantation in Province Wellesley, of which *B* had been in possession since the execution of the deed.
These facts may be proved to show that the deed related to the plantation in Province Wellesley.

34 Accordingly, the “letter of offer” referred to in cl 17.4 would be meaningless since there was in fact no such letter addressed to the Tenant. Looking instead at the context and the extrinsic facts, it is undisputed that the only other relevant document exchanged by parties was the LOI. This must have been what the parties intended to refer to when referencing the “letter of offer”. I thus find that the LOI is indeed referred to in cl 17.4 of the Tenancy Agreement.

35 Additionally, the Landlord also submits that cl 17.4 can only operate in practice where the letter of offer was extended by a landlord to a prospective

⁴⁵ LL Subs at paras 63–65.

tenant and not *vice versa* because “surely what the Landlord offers and accepted by the Tenant would form part of the Tenancy Agreement. However, this is very different when it is the Tenant who issues a [LOI], like in this case. In such a case, what the Tenant offers initially cannot be part of the Tenancy Agreement as the offer by the Tenant is subject to negotiation between the parties and the agreed terms will then be encapsulated in the executed Tenancy Agreement.”⁴⁶ I am unable to agree with the Landlord. I see no difference in the two scenarios, especially if the LOI was signed by both the Landlord and the Tenant, indicating acceptance of the terms of tenancy by both parties.

36 Since the LOI was referred to in cl 17.4 of the Tenancy Agreement, the 24 Months Renewal clause has effectively been incorporated into the Tenancy Agreement, thereby granting the Tenant the right to renew for a period of 24 months at a monthly rent not exceeding 10% more than the current monthly rent.

The independent legal effect of the LOI

37 I shall now deal with the Landlord’s argument that because of the Subject to Contract clause, the LOI is not binding in any way.⁴⁷

38 While the Subject to Contract clause is in the LOI, this does not in itself prevent a finding that the LOI has contractual force. As recognised in *Bumi Armada Offshore Holdings Ltd and Another v Tozzi Srl (formerly known as Tozzi Industries SpA)* [2019] 1 SLR 10, a case which the Landlord cites,⁴⁸ at [22], “[it] does not mean that in every case where an arrangement is expressed

⁴⁶ LL’s Subs at para 65.

⁴⁷ LL’s Subs at paras 43–61.

⁴⁸ See LL’s Subs at para 47.

to be “subject to contract”, the court is inexorably bound to find that there is no contract. As with any issue of interpretation, all relevant and admissible features of the arrangement have to be taken into account...”. Accordingly, there is no impediment to finding that the LOI was a contract imposing obligations just because of the Subject to Contract clause.

39 The Landlord further argues that because the Tenancy Agreement was eventually executed, it superseded the LOI and its terms.⁴⁹ Looking at the Subject to Contract clause, the clause details the consequences when no subsequent written agreement is reached, namely the forfeiture of the deposit and that the LOI would be null and void. However, the Subject to Contract clause does not state what the effect of the LOI is *if a written agreement was entered into subsequently*. I make two observations here. First, the Subject to Contract clause does not itself state that a written tenancy agreement would supersede the terms of the LOI. Second, since the Subject to Contract clause states that the LOI will be null and void only if a written tenancy agreement was not executed within 16 days of its acceptance, the clause is, at the very least, silent on the effect of the LOI if a written tenancy agreement was executed. At the very most, the Subject to Contract clause suggests that the LOI is *not* null and void if a written tenancy agreement was executed.

40 For the above reasons, I am unpersuaded by the Landlord’s arguments that the LOI does not have any independent legal force. It is not necessary for me to determine the *independent* legal effect of the LOI as I have found that the renewal period is 24 months on other grounds that I have explained above.

⁴⁹ LL’s Subs at para 76.

Conclusion

41 Therefore, for all the foregoing reasons, I find that the Tenant does have a right to renew the tenancy for a period of 24 months at a monthly rent not more than 10% above the current monthly rent, *ie* \$49,500. Based on the email sent by Mr Tan on 14 September 2023, due notice had been given by the Tenant to the Landlord to exercise this right. Accordingly, I grant the Tenant's application in OA 1207 and dismiss the Landlord's application in OA 1127.

Tan Siong Thye
Senior Judge

Yeo Choon Hsien Leslie (Sterling Law Corporation) for the claimants in
HC/OA 1147/2023 and the defendants in HC/OA 1207/2023;
Lim Chong Guang Charles and Edwin Yang Yingrong (Shook Lin & Bok
LLP) for the defendant in HC/OA 1147/2023 and the claimant in
HC/OA 1207/2023.