Faber Image Media Pte Ltd v Patrician Holdings Pte Ltd and Another (trading as V4X Joint Venture)
[2009] SGHC 16

Case Number : Suit 324/2007

Decision Date : 13 January 2009

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Prakash Mulani and Bhaskaran Sivasamy (M&A Law Corporation) for the plaintiff; Vijai Parwani (Parwani & Co) for the first defendant; Prabhakaran s/o Narayanan Nair (Ong Tan & Nair) for the second defendant

Parties : Faber Image Media Pte Ltd — Patrician Holdings Pte Ltd and Another (trading as V4X Joint Venture)

Landlord and Tenant

13 January 2009 Judgment reserved

Lai Siu Chiu J

1 This was a dispute concerning a sub-tenancy of premises located at No. 33/34, Boat Quay, Singapore ("the premises") which Faber Image Media Pte Ltd ("the plaintiff") had procured from the main tenant V4X Joint Venture ("V4X") which was a partnership comprising of Patrician Holdings Pte Ltd ("the first defendant") and Rajeev Saxena ("the second defendant").

2 The plaintiff is a Singapore company incorporated on 3 February 2001 and has its registered office at 5 Kaki Bukit Place, Eunos Techpark, Singapore. At the material time, the plaintiff operated an entertainment establishment called "The Roxy". The plaintiff's main business apparently is that of events management and it has about 40 employees (according to an affidavit filed by its managing director).

3 The first defendant is also a local company and it was incorporated on 1 July 2004 with its registered address at No. 33 Boat Quay. Between 7 December 2004 and 29 March 2006, the first and second defendants were two of the partners in V4X which business was registered on 23 April 2004. The principal activity of V4X was the operation of restaurants, bars and pubs. On 6 and 7 December 2004, three partners withdrew from V4X. This was followed by the second defendant's withdrawal on 29 March 2006, leaving the first defendant as the sole-proprietor. The second defendant then sold his shares in V4X to V Ramu ("Ramu") who is a director of the first defendant. (The second defendant is also a director as well as a shareholder of the first defendant). V4X was eventually deregistered on 30 September 2006. V4X and its successor V4X Joint Venture Pte Ltd ("the Company") operated a pub on the premises called 'Mad Flemmings' which was later renamed "The Cavern" ('the pub"). The pub ceased operations on 3 August 2007. The Company was incorporated on 13 July 2006.

4 On 7 December 2004, the defendants as V4X had entered into a tenancy agreement ("the main agreement") with two companies known as 33 Boat Quay Pte Ltd and 34 Boat Quay Pte Ltd (collectively referred to as "the landlord") for the lease of the premises for two years from 1 January 2005 to 31 December 2006 at an annual rent of $315,360 or $864 per day. The defendants were also granted an option to renew the main agreement for a further period of one year and thereafter for two years subject to the terms of the option to renew. The premises are three storey terrace shophouses used for commercial purposes.

5 On 27 September 2005, the defendants entered into a separate agreement ("the sublease") to lease part of the premises ("the sub-premises") to the plaintiff for a period of 14½ months from 15 October 2005 to 31 December 2006 at $6,000 rent per month, with an option to renew for one year from 1 January 2007 to 31 December 2007. (The sub-premises comprised essentially of level 3 of both shophouses). By its letter dated 14 September 2006 ("the renewal notice") (see 1AB 37), the plaintiff claimed it had exercised the option to renew the sublease. It was also the plaintiff's case (which the defendants disputed) that the revised rent for the renewed sublease was agreed at $6,500 per month.

6 Negotiations to renew the sublease took place between the plaintiff's managing-director Seah Seow Chuan Robert ("Seah") and Berry Fabian Paul ("Fabian") a director of the first defendant together with the second defendant, representing the defendants. Seah claimed that prior to 14 September 2006, he had already agreed with Fabian on the revised rent of $6,500. Subsequently, Fabian informed Seah that the defendants had similarly exercised the renewal option in the main agreement and that the landlord had acknowledged the defendants' option to renew.

7 On or about 28 September 2006, a circular dated 27 September 2006 from the Company was received by the general manager (Roland Antony Nicolich) of The Roxy Pte Ltd ("RPL") another of Seah's companies, stating that V4X would change its name to that of the Company as of 1 October 2006. However, no one approached the plaintiff to replace V4X with the Company's name for the renewal of the sublease.

8 The plaintiff alleged that on or about 19 December 2006, Seah received a telephone call from one Chou Li Chen ("Chou") representing the landlord, who purportedly told Seah that the defendants had breached the terms of the main agreement and that the defendants were required to vacate the premises by 21 December 2006. Chou had apparently just found out about the change by V4X from a partnership to a private limited company and he viewed that as a breach of the main agreement. Chou also told Seah that the plaintiff was similarly required to vacate the sub-premises as a consequence and further indicated the landlord would be selling the premises. The premises were indeed sold on 18 October 2006, according to the sale and purchase agreements (2) that were exhibited (at VR-8) in the affidavit of evidence-in-chief ("AEIC") of Ramu. The buyers were Lim Cheng Liang ("Lim") and Lim Siew Lun (collectively "the purchasers").

9 Seah conveyed to Fabian and Ramu what Chou had told him. Seah expressed his concern that the defendants no longer had a lease and requested that they produce evidence to prove V4X or the Company were still legal tenants of the premises. The defendants never produced the requisite documentary evidence despite repeated promises by Ramu that they would.

10 Seah instructed the plaintiff's lawyers to write to the defendants on 19 December 2006 (at 1AB48) to record his concerns. The plaintiff's solicitors stated that if the defendants did not revert to prove otherwise, the plaintiff would assume that the defendants were indeed in breach of the main agreement. Under those circumstances, the plaintiff gave notice it would vacate the sub-premises and claim damages against the defendants.

11 Between 19 December 2006 and mid-January 2007, Seah and the plaintiff's other director Claudine Ho Loo Yieng ("Ho") held numerous meeting with Fabian and Ramu representing the defendants to try to resolve the defendants' problem with the landlord. Seah claimed it was represented to him that the defendants had obtained a new lease from the new owners of the premises at an increased rent. The defendants apparently demanded $13,000 as the monthly rent from the plaintiff which demand Seah rejected on the basis that the plaintiff had already renewed the sublease at $6,500 per month by the renewal notice. Fabian countered that the renewal notice was invalid as it was not sent by registered

mail (it was hand-delivered). The plaintiff decided not to and did not, pay rent to the defendants for January 2007 out of prudence since Seah was not sure they were entitled to the payment. However, as a show of good faith, the plaintiff agreed to give a personal loan of $3,000 to Ramu to defray utility charges on the understanding that the defendants would produce evidence that the main agreement had not been terminated. Ramu eventually returned the sum to the plaintiff.

12 The defendants did not respond to the plaintiff's solicitors' letter in [10] to deny the issues raised therein. Seah discovered from a property agent that Fabian had requested for new tenants to be secured for the sub-premises.

13 The plaintiff's solicitors wrote to the Company on 29 January 2007 (at 1AB50) in response to the Company's invoice for January 2007 rent to say the plaintiff would be compelled to vacate the sub-premises if the Company could not produce evidence to prove the main agreement had not been terminated. As the evidence was not forthcoming, the plaintiff decided not to wait any longer and arranged to move out its possessions on or about 11 February 2007. It eventually vacated the sub-premises on or about 28 February 2007.

The pleadings

14 Shortly thereafter (on 28 May 2007), the plaintiff commenced this suit. In the (amended) statement of claim, the plaintiff relied on certain clauses in the sublease (see 1AB27-30) to say it had duly performed its obligations thereunder. It relied in particular on the renewal clause under cl 5(d) for its right to continue to occupy the sub-premises and alleged that the defendants had breached the covenant of quiet enjoyment under cl 4(a) thereof when the plaintiff was told by Chou that it had to vacate the sub-premises by 21 December 2006.

15 The plaintiff claimed $605,068.39 against the defendants representing wasted expenditure, costs and expenses incurred as a result of the premature termination of the sublease, as well as a claim for refund of the security deposit for the sublease amounting to $12,000. In the alternative, the plaintiff claimed damages to be assessed.

16 Separate defences were filed by the two defendants who were also separately represented at the trial. In its defence and counterclaim, the first defendant denied that the plaintiff had properly exercised the option to renew clause. The first defendant alleged that the renewal notice was insufficient to constitute a valid notice to renew the sublease for a further period of one year as the parties had not agreed on the revised rental and the plaintiff had at no time indicated it was prepared to pay the maximum sum of $6,500 per month, as provided for under cl 4(a) of the sublease. The first defendant alleged that through its previous solicitors' letters dated 29 January and 13 February 2007, the plaintiff had unequivocally withdrawn the renewal notice.

17 Consequently, the defendants' purported breach of cl 4(a) of the sublease (which was denied) was no longer a live issue to be determined by the court and the first defendant put the plaintiff to strict proof it had breached the main agreement.

18 In the alternative, the first defendant contended that the defendants had validly exercised its right to renew the main agreement and the landlord's notice of eviction was invalid.

19 The first defendant averred that the plaintiff continued to enjoy quiet possession of the sub-premises on the terms and conditions of the sublease until sometime in February 2007 when it chose of its own accord to vacate the sub-premises. Consequently, the defendants' breach of the main agreement (which was not admitted) did not prevent the plaintiff from peaceably holding and enjoying

the sub-premises for the whole of the original term under the sublease. The first defendant denied that its alleged breach of the main agreement caused the plaintiff's alleged wasted expenditure and costs which would have to be incurred in any event when the plaintiff reinstated the sub-premises after expiry of the sublease.

20 In the alternative, the first defendant alleged that the plaintiff's right to renew under cl 5(d) of the sublease was conditional upon the defendants validly renewing the main agreement with the landlord by exercising the defendants' own right of renewal. If the defendants had not validly exercised that right, then the plaintiff was incapable of exercising its right of renewal either. Accordingly, the sublease expired on 31 December 2006 and the plaintiff continued thereafter to be a tenant of the defendants on a month to month basis from 1 January 2007 to 28 February 2007. The plaintiff had on 13 February 2007 through its former solicitors requested an extension of time until 10 March 2007 to remove its furniture and fittings from the sub-premises which it eventually removed between 28 February and 1 March 2007.

21 The first defendant contended that the plaintiff was not entitled to a refund of the security deposit of $12,000 as it failed to pay the rent arrears and utilities for the months of January and February 2007 and it caused damage upon dismantling of the fittings and fixtures at the sub-premises.

22 The first defendant counterclaimed rent of $12,000 and the costs of making good the damage caused by the plaintiff.

23 In his defence, the second defendant averred that he retired from the partnership of V4X on 29 March 2006. Consequently the second defendant was unaware and was not involved with V4X when the plaintiff exercised the option on 14 September 2006 to renew the sublease. He had no commercial dealings with the plaintiff and denied he had breached the main agreement and/or the sublease. The second defendant denied he was liable in law or in fact for the plaintiff's alleged losses although he was aware that the plaintiff operated an entertainment establishment known as "The Roxy".

24 In the reply and defence to the counterclaim, the plaintiff denied it had not agreed to the revised rent of $6,500. It relied on the defendants' solicitors' letter dated 12 February 2007 in this regard confirming the revised rent had been agreed. The plaintiff contended that its solicitors' letters dated 29 January and 13 February 2007 had been taken out of context and it had not withdrawn the renewal notice.

The evidence

25 The plaintiff called Seah (PW1) and Ho as its witnesses. On their part, the defendants' witnesses were Fabian and Ramu for the first defendant while the second defendant was the only witness for his case. The trial before this court was only on liability and depending on my ruling, the quantum of damages due to the successful party will be assessed at a later date.

(i) The plaintiff's case

26 The essential facts Seah deposed to in his AEIC have been adequately set out earlier at [5] to [13]. Seah disclosed that the plaintiff was never informed by the second defendant he had retired from the partnership. Seah believed the second defendant was still a partner because the latter was seen at the premises until some time in May 2006. Seah only found out on or about 18 December 2006 that the second defendant had withdrawn from V4X from a business profile search done at the

office of the Accounting and Regulatory Authority ("ACRA").

27 According to Seah, due to the plaintiff's inability to find suitable alternative premises at such short notice, the business of "The Roxy" was discontinued after the plaintiff vacated the sub-premises. This resulted in the termination of the services of some employees of "The Roxy" whom he could not redeploy for his other businesses. The ex- employees were paid compensation by RPL on the plaintiff's behalf (as the plaintiff suffered liquidity problems then) on the understanding that the plaintiff would reimburse RPL when compensation was received from the defendants. Contrary to the denials of its counsel, the plaintiff was indeed in a bad financial state as a director (presumably Seah) had to extend loans to the company. Before the commencement of trial, the first defendant had applied for security for costs (of $80,000) from the plaintiff (under s 388 of the Companies Act Cap 50 2006 Rev Ed) as it was insolvent according to its financial statements ending 30 June 2007. Although I dismissed the application primarily due to its lateness, I required a written undertaking from the director who extended the loans not to ask for repayment of his advances until after the outcome of this trial or until further order.

28 I turn now to the evidence adduced from Seah in the course of cross-examination. Seah revealed that "The Roxy" was not a normal entertainment outlet but a place where he entertained his clients to solicit their business for his other ventures. He estimated he had spent around $800,000 in renovations on the sub-premises.

29 On the disputed issue of whether the plaintiff had properly renewed the sublease, it would be necessary to look at the relevant correspondence exchanged between the parties starting with the renewal notice (signed by Seah) addressed to both defendants, the full text of which (at 1AB37) reads as follows:

> Pursuant to clause 5(d) of the Agreement, we hereby give you notice of our intention to exercise the option to extend the sub-tenancy term created under the Agreement for a further period of one year from 1 January 2007 to 31 December 2007.

30 In the light of the defence at [16] that the renewal notice had been unequivocally withdrawn by the plaintiff's solicitors' letters dated 29 January and 13 February 2007, it would be necessary to look at those letters as well.

31 The plaintiff's solicitors' letter dated 29 January 2007 at [13] addressed to the Company contained the following relevant paragraphs:

> 4 First and foremost, we note that you are not a party to the above Sub-Tenancy Agreement. Therefore your demand pursuant to your Invoice No. INV/ROXY/06-08 is unlawful, unwarranted and without any legal standing.
>
> 5 Next, we note from [sic] M/s Lim Hua Yong & Co's letter dated 19 September 2006 addressed to Rajeev Saxena and Patrician Holdings Pte Ltd ("**RS and PHPL**") has not been replied to. In this letter, our clients specifically stated that RS and PHPL had breached the terms of the Main Tenancy Agreement with the landlord and as a result eviction notices have been sent to RS and PHPL as well as our clients. In the premises, it shall be taken that the allegations and statements in the said letter are admitted by RS and PHPL.
>
> 6 Thirdly, we understand from our clients that you had purportedly taken over RS and PHPL by using the corporate vehicle known as V4X Joint Venture Pte Ltd. In this connection, we wish to put on record that no notice of any assignment of the above Sub-Tenancy Agreement was

officially given by RS and PHPL and/or yourselves to our clients. Further, we are of the view that the Sub-Tenancy does not allow for any such assignment to be undertaken by RS and/or PHPL.

7 Fourthly, we note that RS and PHPL have not properly given the necessary notices to the landlord to extend and/or renew the Main Tenancy Agreement. As such, our clients are likewise incapable of renewing the Sub-Tenancy Agreement.

8 Unless a fresh Sub-Tenancy Agreement is signed between yourselves and our clients, no agreement of tenancy exists between yourselves and our clients. This position has been re-affirmed by virtue of the meeting between your Mr V Ramu and our client's Mr Robert Seah on or about 6th January 2007 whereby your Mr Ramu had informed Mr Seah that you require him to sign a new Sub-Tenancy Agreement for a period of 2 years reflecting amongst other things an increase in the rental amount to be paid by our client……

9 In respect of the above Sub-Tenancy Agreement and in view of the matters stated above, we are instructed by our clients to inform Messrs RS and PHPL and/or yourselves (subject to you being able to properly justify yourselves as the new Main Tenant of the premises) that our clients no longer wish to lease the said premises which is referred to in the above Sub-Tenancy Agreement*. Any previous renewals sent by our clients to Messrs RS and/or PHPL is hereby withdrawn*...[my emphasis added].

32 The material paragraphs of the plaintiff's solicitors' letter dated 13 February 2007 (at 1AB 55) stated as follows:

2 Our clients do not wish to renew the Tenancy of the premises. Notice to Quit the premises had already been given to your clients by way of our clients' previous solicitors Lim Hua Yong & Company in their letter dated 19th December 2006.

5 Your clients are not entitled to charge S$6,500 per month as there is no agreement between our respective clients to this effect.

33 The letter (from the Company's and not the defendants' solicitors) dated 12 February 2007 (at 1AB53) to the plaintiff's solicitors referred to in the reply and defence to the counterclaim at [24] states:

We refer to your letter dated 29 January 2007 and the Sub-Tenancy Agreement dated 27 September 2005.

Under the Sub-Tenancy Agreement, your clients have agreed to rent the premises at a monthly rent of $6,500 subject to other charges that will be incurred (estimated to be around $3,000 a month). We are instructed by our clients that they are not prepared to maintain the rental amount at the previous rate as the new landlords have imposed a higher rental in respect of the main tenancy. If your clients are not agreeable to the increase in rental amount, they are free to vacate the said premises by the end of February 2007

34 Under cross-examination by counsel for the first defendant on the plaintiff's solicitors' letter in [31] Seah agreed that it gave the impression (in para 7) that the defendants were incapable of renewing the sublease. As for the plaintiff's solicitors' letter dated 13 February 2007 at [32], Seah explained that if V4X did not have the main agreement renewed, then it did not have a sublease to give to the plaintiff. It followed that the defendants were not entitled to charge the plaintiff rent of $6,500. Consequently, the rent remained at $6,000 per month under the existing sublease. He

confirmed (at N/E 17 on 22.7.08) that the $6,500 rent had been agreed between him and Fabian in 'casual conversation' before the renewal notice at [5] was issued.

35 Questioned if the defendants' breach of the sublease was dependent on whether the defendants had breached the main agreement, Seah prevaricated. Under further cross-examination, Seah explained that the defendants were in breach of the sublease because:

(i) they changed the constitution of the partnership (V4X) to that of a limited company (the Company);

(ii) attempted to extort a higher rent ($13,000) from the plaintiff after the revised rent of $6,500 had been agreed to and

(iii) they changed the locks for access to the sub-premises on or about 14-15 February 2007 without prior warning to the plaintiff.

36 However, it was drawn to Seah's attention that the plaintiff paid the Company's invoices (at 1AB249) for the rent for October 2006 and in the plaintiff's solicitors' letter dated 13 February 2007 at [32], it was contended that the plaintiff was only liable to the Company for $8,142.85 as rent from 1 January to 10 February 2007, thereby implicitly accepting the Company as its landlord. Seah explained that such matters were handled by his accounts department (even though the cheques were signed by him) and he was not aware of the breach set out in (i) of [35] until December 2006.

37 Seah's attention was drawn to the sale and purchase agreements for the premises dated 18 October 2006 at [8] that Chou had signed on the landlord's behalf with the purchasers. It was noted therefrom that No. 33 Boat Quay was sold for $4.168m while No. 34 Boat Quay was sold for $4.11m. Both agreements contained in cl 13 the following provision:

> The property is sold with existing tenancy to V4X Joint Venture ("the tenant") as per copy of stamped tenancy agreement dated 7th December 2004 attached. If the vendor is able to deliver vacant possession on completion, then the purchasers shall pay dollars one hundred thousand ($100,000) more for the purchase price.

38 When he was told by Chou that the defendants had breached the main agreement and would be evicted from the premises, Seah testified that he did not think it was necessary to have such eviction confirmed in writing to the plaintiff's lawyers by the landlord. He said it was not his concern as the plaintiff's agreement was not with the landlord but with the defendants. However, after the premises were sold, Seah disclosed he had occasion not only to speak to Lim but to meet Lim who visited him at the sub-premises. He confirmed that at no time was he told by Lim that the plaintiff must vacate the sub-premises. Neither did Lim inform Seah that the defendants' tenancy had been terminated. Apparently, Lim merely requested Seah to refer to Ramu. Consequently, there was no document before the court to evidence that the landlord/previous owner of the premises had terminated the lease of V4X. Although Lim was supposed to be the first defendant's witness, he was not available as he was not in Singapore at the time of the trial.

39 In the course of his cross-examination by counsel for the second defendant, it was confirmed that Seah did not see the second defendant at the premises *after* May 2006. Further, Seah had no dealings with the second defendant *after* Ramu was introduced to Seah as the new investor in V4X.

40 Nothing turns on the evidence of Ho (PW2) who became a director of the plaintiff on 21 September 2005 and who by the time of the trial, had resigned her directorship and was no longer

a shareholder. Prior thereto (in 2004), she was an employee of the plaintiff. Ho was not involved in the negotiations in respect of the sublease although she participated in discussions on the revised rental of $6,500 for renewal of the sublease. She confirmed the second defendant was not present at those discussions. Ho said she instructed the plaintiff's general manager to hand-deliver the renewal notice to Fabian but the second defendant was not served. Ho's testimony essentially repeated and/or corroborated Seah's testimony. Quite often what she knew of events was what she was told by Seah. Her evidence therefore did not advance the plaintiff's case.

(ii) The first defendant's case

41 The first defendant's principal witness was Fabian (DW1) who explained that he and Ramu incorporated the Company for the purpose of taking over the business of V4X. He had informed the landlord of the change in the status, that the Company would pay the rent and assume the role of tenant. The landlord had no objections because V4X was always prompt in paying the rent. As with the plaintiff's case, I shall focus my attention on the evidence adduced from Fabian in cross-examination.

42 Before considering Fabian's testimony, it would be appropriate to first look at the circular at [7] that the defendants sent to the plaintiff on 28 September 2006 on the company's letterhead (at 1AB38). It was signed by Fabian and said:

> Change of Company type
>
> As our new letterhead indicates, we would like to inform you that our company V4X Joint Venture (Co. Registration No. 53019183X) will be changed to V4X Joint Venture Pte Ltd (Co. Registration No. 200610262E) as of 1st October 2006.
>
> There will be no change in management and we will still be providing the same products and fine service. We would appreciate if you could assist us in changing the contract signed between V4X Joint Venture and your company, based on the same terms and conditions with backdated contract between V4X Joint Venture Pte Ltd and your company.
>
> We would appreciate that you would be able to make the necessary amendments at the soonest and we look forward to hearing your early reply.

43 It would also be appropriate at this stage to set out clauses 4 and 5 of the sublease (see 1AB 27-30):

> 4 The Tenant hereby **covenants** with the Sub-Tenant
>
> (a) That the Sub-Tenant paying the rent hereby reserved and observing and performing the several covenants and stipulations on the Sub-Tenant's part herein contained shall peaceably hold and enjoy the said Part of the demised premises during the term of the sub-tenancy without any interruption by the Tenant or any person rightfully claiming under or in trust for the Tenant.
>
> (b) That the Landlords have agreed that the Sub-Tenant shall be entitled to install at its own expense a new air-conditioning system to replace the Landlords' existing air-conditioning system so long as the new system is more superior in cost and in quality than the existing and is to enhance the demised premises and provided that the Sub-Tenant and/or the Tenant must not remove the new air-conditioning system at the expiration of the sub-

tenancy and/or the tenancy.

(c) That the Landlords have agreed that at the expiry of the sub-tenancy hereby created the Sub-Tenant is not obligated to reinstate the said Part of the demised premises to its original condition.

5 **Provided** always and it is expressly stipulated that:

(d) In response to the Sub-Tenant's desirous intent hereby affirmed to have an option to renew sub-tenancy upon the expiration of the term hereby created for a further period of twelve (12) months, the Tenant hereby grants such option to the Sub-Tenant provided that the Sub-Tenant shall exercise such option with a written notice served to the Tenant not less than three (3) months before the expiration of the Sub-Tenancy and provided that at the time of such exercising of option the Sub-Tenant shall not have any existing breach or non-observance of any of the covenants and stipulations on the part of the Sub-Tenant herein contained then the Tenant will let the said Part of the demised premises to the Sub-Tenant for a further term of twelve (2) months as from 1st January 2007 to 31st December 2007 upon the same terms and conditions as herein contained; SUBJECT ONLY to the right of the Tenant to review the rent to market rates (subject to no decrease but with upward capping at S$6,500 per month). In this connection, if the Sub-Tenant before exercising the option does not agree with the Tenant pertaining to the market rental as assessed by the Tenant then the Sub-Tenant shall be at liberty to demand the Tenant to appoint an international property consultancy and agency company to assess a just and fair market rental value for acceptance by both parties, with such professional fee payable by the Sub-Tenant. **This clause can only take effect provided that the Tenant exercises its option to renew the tenancy under clause 4(d) of the Main Agreement for a further period of 12 months till 31st December 2007.**

44 In his AEIC (at para 24), Fabian had asserted that the renewal notice (at [29]) was insufficient to constitute a valid notice to extend the sublease as the parties had not agreed on the revised rental. In cross-examination however, he conceded that the plaintiff would likely have agreed to the revised rent of $6,500 as that was the maximum increase allowed under cl 5(d) and the plaintiff had not indicated it disagreed with that figure.

45 When his attention was drawn to the fact that the words "your clients" in para 5 of the plaintiff's solicitors' letter dated 13 February 2007 at [32] referred to the Company, Fabian conceded that there was no agreement between the plaintiff and the Company to renew the sublease. Consequently, it was put to him that the first defendant was wrong in its contention that the plaintiff had unequivocally withdrawn the renewal notice by its solicitors' aforesaid letter.

46 Fabian revealed that the first defendant and Ramu were still negotiating with the purchasers in January 2007 on the terms of renewal of the main agreement by the Company. Consequently, the first defendant needed more time before it could finalise the terms of renewal of the sublease with the plaintiff.

47 Fabian admitted that the landlord had indeed given V4X notice to quit as alleged in para 5 of the plaintiff's solicitors' letter dated 29 January 2007 (see [31]) and that V4X had not replied to or refuted the allegation. Indeed, the intended eviction by the landlord was told to the plaintiff by Fabian and Ramu when they met Seah. However, Fabian and Ramu had also assured Seah that there was no need to worry and the plaintiff could continue to occupy the sub-premises as they were in the process of negotiating with the purchasers for the renewal of the main agreement; the

purchasers were agreeable to the Company staying on at the premises. Apparently the issue centred on the rental deposit. The landlord had not returned the deposit furnished under the main agreement while the purchasers required a deposit for the renewal of the main agreement.

48 At this juncture, it would be necessary to refer to the notice dated 3 August 2006 given by V4X to renew the main agreement ("the defendants' renewal notice"). The defendants' renewal notice was emailed to Chou by Fabian in his capacity as "director" and it said:

> Dear Mr Chou,
>
> On behalf of V4X Joint Venture I would like to seek your kind understanding that we would like to exercise our option to renew tenancy for a further period of (1) year with effect from 1st January 2007.
>
> Based on our Tenancy Agreement signed between ourselves and the Landlords of 33/34 Boat Quay we are prepared to uphold the clauses in the Tenancy Agreement with regards to all the terms and conditions of the Tenancy Agreement.
>
> Kindly acknowledge and we look forward to your favourable reply. We are also positive that we can have a long and fruitful business relationship together.
>
> Thanks and best regards.

49 When no acknowledgement came from Chou, Fabian repeated his above email message to the latter on 8 August 2006. Chou replied by email on 22 August 2006 with the following cryptic message:

> You have already notified earlier.

Since neither side called Chou as a witness, the court was none the wiser on what Chou meant by his response.

50 Fabian agreed that the defendants demanded a higher rent than $6,500 in its solicitors' letter dated 12 February 2007 at [33]. He claimed (at N/E 75 on 22 July 2008) that he had "overlooked" this letter. He conceded that no letter was sent to the plaintiff's solicitors confirming that the defendants had the right to grant a one year tenancy to the plaintiff.

51 It was not disputed that the defendants did not return the plaintiff's deposit. Fabian explained it was because the plaintiff failed to pay the rent for January and February 2007. In cross-examination however, Fabian conceded that the first defendant was not entitled to rent for those months because it was no longer the occupant of the premises, the Company (rightly or wrongly) having assumed the role of tenant. He accepted that the first defendant had no basis to withhold the deposit from the plaintiff.

52 The second defendant on his part produced documents (at 3AB 80-81) which showed that after the sale of his shares in V4X to Ramu, the latter gave an undertaking to V4X and the two defendants to clear all outstanding amounts owed to third parties including the deposit of $12,000 due to the plaintiff.

53 As the second defendant was no longer a partner of V4X after 29 March 2006 and was no longer liable, Fabian said he did not inform the second defendant of the renewal notice. Neither was the second defendant privy to the discussions and negotiations that took place between the first

defendant's representatives and/or Ramu and the plaintiff in December 2006 and January 2007. Fabian testified he had introduced Ramu to Seah in April 2006 informing Seah that Ramu was taking over the second defendant's shares and that the latter had resigned from the business of V4X. (This piece of evidence was disputed by the plaintiff's counsel on the basis that it did not appear in Fabian's or Ramu's AEICs although Ramu confirmed it when he took the stand).

54 Ramu was the first defendant's other witness. His AEIC mirrored that of Fabian's. As counsel for the plaintiff asked almost the same questions of Ramu (DW2) as he did of Fabian and to which he received similar if not the same answers as Fabian's, it serves no purpose to review Ramu's testimony in any detail save on three points.

55 First, unlike Fabian, when he was questioned on the first defendant's entitlement to counterclaim rent from the plaintiff for January and February 2007, Ramu would not commit himself. It was only after the court pressed counsel for the first defendant for confirmation that ultimately the counterclaim was withdrawn (see N/E 21 on 23 July 2008). Second, Ramu claimed the renewal notice was not valid because it was not sent to the first defendant under registered mail. (This reason did not appear in either his AEIC or his supplemental AEIC). Third, Ramu disagreed that there was an oral agreement to renew the plaintiff's sublease at $6,500 per month. However he conceded that the first defendant's solicitors had never once denied the plaintiff's allegation (in its solicitors' letter dated 29 January 2007) that he required Seah to sign a new two year sublease at a higher rent. Ramu clarified that by "higher rent" he meant a figure between $6,000 and $6,500 not a figure above $6,500. He clarified that the reference to "rental amount at the previous rate" in his solicitors' letter in [33] meant $6,000 not $6,500.

56 Ramu claimed he had offered the plaintiff to renew the sublease at anything between $6,000 and $6,500. A second option he offered was he would renegotiate with Seah on the rent for the sublease after he had negotiated with the landlord for a renewal of the main agreement. Ramu's third option was that the plaintiff could leave the sub-premises if it did not accept his first two offers.

57 While he agreed that the plaintiff only occupied the sub-premises on a month-to-month tenancy after December 2006, Ramu asserted that he had assured the plaintiff in good faith that "he would take care of everything". He was then in the midst of sorting out issues with the landlord and he intended to update the plaintiff on the status quo. He agreed he was unable to produce documentary evidence demanded by the plaintiff evidencing the renewal of the main agreement by the first defendant or the Company, because he needed more time.

58 It was also Ramu's understanding of cl 5(d) of the sublease at [43], that unless the main agreement was renewed by the landlord, the first defendant was not obliged to renew the sublease and was not liable to the plaintiff for not doing so even if the failure was due to breach of the main agreement by the first defendant. Needless to say, Ramu's interpretation was rejected by counsel for the plaintiff.

(iii) The second defendant's case

59 There is no necessity to review the second defendant's testimony which quite simply was that he was no longer involved in the business of V4X after his shares were sold to Ramu and therefore he was not liable to the plaintiff. The second defendant agreed that he did not notify the plaintiff he had resigned from the partnership of V4X when Ramu took over his shares. Even so, he disagreed with counsel for the plaintiff that he remained liable to the plaintiff for damages for breach of the sublease.

The issues

60 The main issue for determination is did the renewal notice validly renew the sublease under cl 5(d) of the sublease? If it did, the first defendant would be in breach of the failure to renew unless this court accepts its argument that it had no obligation to renew the sublease unless it was able to renew the main agreement. The other issue for determination is, would the second defendant still be liable to the plaintiff (if the first defendant was found to be liable) notwithstanding the fact he had withdrawn from the business of V4X on 29 March 2006? A peripheral issue to be determined is, was the second defendant obliged to inform the plaintiff of his retirement from the partnership in order to escape liability should the court find in favour of the plaintiff?

The decision

The claim against the first defendant and the first defendant's counterclaim

61 On the evidence, I accept that the renewal notice set out in [29] was valid and effective. Although the first defendant's' two witnesses (Fabian and Ramu) sought to say otherwise, I dismiss their objections as frivolous and unmeritorious. The fact that the plaintiff did not specify that the renewal would be at a revised rent of $6,500 is not a valid ground to reject the renewal notice when the first defendant's solicitors' letter dated 12 February 2007 at [33] confirmed Seah's testimony that $6,500 was the agreed rent. The other contention by the two witnesses that the renewal notice was not sent by registered mail to the first defendant is too frivolous to deserve any consideration.

62 As the renewal notice was valid, the first defendant on its part should have (which it did on 3 August 2006 at [48]) applied to the landlord to renew the main agreement. The landlord did not accede to the request for two reasons:

(a) V4X was alleged to have breached the main agreement by converting its constitution from a partnership to that of a limited liability company (ie the Company) without notice to or prior approval from the landlord; and

(b) it decided to sell the premises to the purchasers and the latter gave the landlord an incentive totalling $200,000 (see [37]) if the landlord could deliver vacant possession of the premises at the time of completion of the sale.

63 Counsel for the plaintiff had objected (N/E 52 on 21 July 2008) as speculative the question put by counsel for the first defendant to Seah, that Chou was motivated by greed when the landlord wanted to evict the defendants from the premises. Although Chou did not testify, there is little doubt in my mind that the landlord's move to evict V4X from the premises (using (a) above as the reason) was primarily if not solely motivated by the incentive of an extra $200,000 from the purchasers in return for vacant possession at the time of completion.

64 It cannot be a coincidence that the plaintiff was purportedly told to vacate the premises on the completion date of the sale to the purchasers (*viz* 21 December 2006). Further, in the letter from the landlord's solicitors dated 15 December 2006 (at 2AB158) to the Company demanding vacant possession of the premises, the landlord requested the Company to sign a settlement deed and return the document by close of business that same day. The landlord had offered the Company a sum of $10,000 "purely on a goodwill basis and with no admission as to liability" (see cll 2 and 3 of the settlement deed in exhibit BFP-7 of Fabian's AEIC) in exchange for vacant possession of the premises by 5pm of 19 December 2006.

66 The question this court has to determine is, did V4X breach the main agreement by having the Company take over the premises as the tenant? In this regard it is necessary to look at cl 2 of the

main agreement; it states:

> The tenant hereby covenants with the landlords:
>
> (q) not to assign, sublet or part with the possession of the demised premises or any part thereof to any third party without the written consent of the landlords, such consent not to be vexatiously withheld.

67 It is noted that neither V4X nor the Company produced (as the plaintiff demanded) evidence of renewal of the main agreement by the landlord. By the same token, neither did the plaintiff produce any evidence of a notice to quit to V4X from the landlord. However, in the light of the letter dated 15 December 2006 in [64] from the landlord's solicitors to the Company and Fabian's admission in [47], the fact that a notice to quit had been issued by the landlord to V4X cannot be disputed.

68 It is however noteworthy that there was no evidence before the court (apart from Seah's bare allegation which was not substantiated in the absence of Chou as a witness) that the landlord had given the plaintiff notice to quit the sub-premises. There was also no evidence before the court that the landlord had notified the plaintiff or V4X that there had been a breach of the main agreement by V4X. As the first defendant rightly submitted, the plaintiff through Seah wanted V4X to prove a negative – that it had <u>not</u> breached the main agreement when the burden at law was on the plaintiff to prove (which it could not/did not) that there was indeed such a breach.

69 Lay persons do not normally appreciate the legal niceties at law between unincorporated bodies and corporate entities. While the partnership/the sole-proprietorship of V4X may share the same name as the Company, the constitution of the former was vastly different from the latter. Consequently, the landlord was entitled at law to take the stand if it did (even if it was technical and/or unmeritorious) that when V4X was deregistered on 30 September 2006, the tenancy under the main agreement terminated without more. In the light of cl 2(q) of the main agreement set out in [66], it was not possible for the Company to have succeeded V4X as the tenant without the landlord's prior consent and without a formal assignment.

70 Consequently, V4X was in no position after 30 September 2006 to offer a renewal of the sublease to the plaintiff. That did not mean as the first defendant's witnesses sought to argue, that the inability of V4X to renew the main agreement under cl 4(d) of the main agreement meant that it was not liable to the plaintiff for the failure to renew the sublease. Common sense if not the law dictates that if the inability of V4X to renew the sublease was due to its breach of the main agreement, it would be liable to the plaintiff if the plaintiff had given a valid notice of renewal (which I have held in [61] it did). I accept the plaintiff's closing submission that the defendants cannot take advantage of their own wrong to avoid their legal obligations to the plaintiff (see *Alghussein Establishment And Eton College* [1988] 1 WLR 587 followed in *Evergreat Construction Co Pte Ltd v Presscrete Engineering Pte Ltd* [2006] 1 SLR 634 at [51] and see also *Chitty on Contracts* vol 1 (Sweet & Maxwell, 30th Ed, 2008 at para 1-031 p 27).

71 I turn next to the first defendant's secondary defence on the renewal notice – that it was not valid because the increased rent of $6,500 had not been agreed. The short answer to this argument is that the first defendant cannot maintain this defence in the light of the Company's solicitors' letter dated 12 February 2007 which relevant text set out in [33], clearly stated that the plaintiff had agreed to the revised rent of $6,500.

72 Another peripheral defence raised by the defendants was that the Company's solicitors' reference in the same letter (at [33]) to 'previous rate' on the rent meant $6,000 and not $6,500. I reject this

argument as in the context of the paragraph, the sentence

> We are instructed by our clients that they are not prepared to maintain the rental amount at the previous rate as the new landlords have imposed a higher rental in respect of the main tenancy.

can only mean $6,500 was the previous rate not $6,000.

73 Another related and more crucial issue the court has to determine is, was the renewal notice withdrawn by the plaintiff's solicitors' letter dated 29 January 2007 (at [31]) as the first defendant pleaded in its defence? In its closing submissions (paras 68-70), the plaintiff argued that a plain reading of the said letter and its context made it clear that the plaintiff did not withdraw the renewal notice. The plaintiff relied on the testimony and concessions made by Fabian and Ramu in that regard.

74 I reject the plaintiff's submissions. With respect, it is for the court not witnesses of fact, to interpret para 9 of the letter dated 29 January 2007 written not by a layperson but by the plaintiff's solicitors. The entire paragraph is reproduced below:

> 9 In respect of the above Sub-Tenancy Agreement and in view of the matters stated above, we are instructed by our clients to inform Messrs RS and PHPL and/or yourselves (subject to you being able to properly justify yourselves as the new Main Tenant of the premises) that our clients no longer wish to lease the said premises which is referred to in the above Sub-Tenancy Agreement. *Any previous renewals sent by our clients to Messrs RS and/or PHPL is hereby withdrawn*. In this connection, we are further instructed to request and/or demand for the following:-
>
> > (a) The immediate return of our clients' deposit in the sum of S$12,000 which we understand is now held by you in trust for our clients.
> >
> > (b) That you allow our clients a reasonable period (ie 30 days) for our clients to remove all renovations that they have done onto the said premises and/or remove all furniture and added fixtures. Alternatively, should you wish for our clients not to remove the said renovations and/or furniture and/or fixtures, we are instructed to propose that our clients are prepared to sell the same to you for a reduced sum of S$400,000.00 [our clients had spent S$600,000.00 on renovations/furniture/fixtures].

The above letter was headed "SUB-TENANCY AGREEMENT DATED 27 SEPTEMBER 2005 ('The SUB-TENANCY AGREEMENT").

75 Read with the heading, what could be clearer than the unequivocal language used in the second last sentence of para 9 as italicised? The renewal notice dated 14 September 2006 was indeed addressed to the second and first defendants (referred to as RS and PHPL respectively in the letter). No other renewal notice was ever sent by the plaintiff to the defendants that could have been the subject of withdrawal in para 9. Any doubts that the plaintiff did not intend by para 9 above to renew the sublease were removed by the plaintiff's solicitors' subsequent letter dated 13 February 2007 (see [32]) where it was stated:

> Our clients do not wish to renew the Tenancy of the premises

76 In addition, why would the plaintiff give notice of its intention to vacate the premises if it did not intend to withdraw the renewal notice, even if its demand for refund of the rental deposit can be explained on the basis it had no contractual relationship with the Company? It bears repeating that

the plaintiff did not produce any independent evidence to support Seah's claim that Chou/the landlord gave the plaintiff notice to quit the sub-premises. Chou did not testify and the plaintiff offered no explanation why he was not called as a witness.

77 Consequently, the renewal notice having been withdrawn by its solicitors, the plaintiff cannot maintain its claim for breach of the sublease by the defendants' failure to renew the same. The plaintiff occupied the sub-premises on a month-to-month tenancy after expiry of the sublease on 31 December 2006. The plaintiff's claim that it did not have quiet enjoyment of the sub-premises is frivolous and unfounded as were Seah's allegations of other breaches of the sublease set out in [35] above. So long as the plaintiff occupied the sub-premises, rent was payable. The question is to who? It could not be to the defendants as V4X ceased to exist as of 30 September 2006. The rent if at all payable was due to the Company. Consequently, the first defendant's counterclaim for arrears of rent is unsustainable. This was conceded by the first defendant's witness Fabian and the counterclaim was subsequently withdrawn by its counsel (see [55]).

78 In the light of my finding that the plaintiff withdrew its renewal notice, it must follow that it moved out voluntarily from the sub-premises on or about 28 February 2007.

79 The first defendant's closing submission highlighted the fact that the plaintiff's demand for refund of the deposit by its solicitors' letters dated 29 January 2007 and 13 February 2007 were addressed to the Company and not to V4X. Hence, the first defendant submitted, the plaintiff were aware that the deposit had been transferred to the Company from the first defendant and the plaintiff should pursue its claim against the Company subject to the Company's right of setoff for arrears of rent. In this connection, Seah had not denied that he had signed cheques on the plaintiff's behalf in favour of the Company in payment of rent (see [36]) although his excuse was he did not pay attention to such matters which were left to the plaintiff's accountant. Even so, I cannot overlook the fact that the plaintiff's solicitors made a demand not of V4X but of the Company for the return of the deposit. Having paid rent in October 2006 to the Company (for whatever the reason), then disputing the quantum of rent payable to the Company for January and February 2007 and subsequently demanding refund of the deposit from the Company, the plaintiff cannot blow hot and cold at the same time. It had implicitly accepted the Company as its landlord and should not be allowed to claim the deposit from the defendants who said the deposit had been transferred to the Company.

80 Consequently, the plaintiff's claim against the first defendant like the first defendant's counterclaim has no merit and is dismissed.

The claim against the second defendant

81 It is clear on the evidence that the second defendant could not have been liable to the plaintiff on its claim in any event as he was no longer a partner of V4X after 29 March 2006. It was also in evidence from the plaintiff's witnesses that they did not see the second defendant at the premises after May 2006. It should be noted (as was submitted by the second defendant) that as of May 2006, there was no breach of the sublease by the defendants. Similarly, there was no breach of the sublease when the business of V4X was terminated on 30 September 2006.

82 The plaintiff sought to argue in its closing submissions that it was unaware of the second defendant's withdrawal from the partnership. That submission cannot stand in the light of the evidence adduced from Seah and Ho. They admitted they had not seen the second defendant on the premises after May 2006. Thenceforth, they dealt only with Fabian and Ramu. Moreover, it is more likely than not that when Ramu was introduced to Seah by Fabian, Seah would have been told that Ramu had bought out the second defendant's shares in V4X. The change in the partnership and

subsequent sole-proprietorship was reflected in the records filed with ACRA while the change in the constitution of V4X to a limited company was notified to the plaintiff on or about 28 September 2006. What the plaintiff should have done but failed to do, was to conduct a search in ACRA and it could have ascertained therefrom whether the second defendant was still a partner in V4X at the time of the alleged breach of the sublease (September 2006) and at the time of commencement of these proceedings.

83 On the evidence and contrary to Seah's denial, I find on a balance of probabilities that the plaintiff was told of the second defendant's withdrawal from V4X when Ramu was introduced to the plaintiff. If the second defendant remained a partner as Seah claimed he thought, why did the plaintiff deal with Ramu thenceforth and not with the second defendant? Should Seah not have questioned Ramu's status? The fact that Seah did not can only mean that he knew Ramu had taken over from and stepped into the shoes of the second defendant. Moreover, even one of the purchasers (Lim) had requested Seah to refer to Ramu [38] on the issue of the defendants' tenancy. Why would Lim do that unless Ramu was either a partner or the sole-proprietor of V4X?

84 As the second defendant rightly submitted, s 36(1) of the Partnership Act Cap 391 1994 Rev Ed ("the Act") merely states that where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change. The manner of notification was not spelt out in the Act. Here, there was oral notification of the change in the business of V4X by the first defendant's representative Fabian to Seah.

85 Consequently, the plaintiff's claim against the second defendant is also dismissed. As I understand from the plaintiff's solicitors that it had made Offers To Settle to the defendants pursuant to O 22A of the Rules of Court (Cap 322, R 5 2006 Rev Ed), I will hear parties on the issue of costs on another day.