

HSBC Institutional Trust Services (Singapore) Ltd (trustee of Suntec Real Estate Investment Trust) v Picket & Rail Asia Pacific Pte Ltd
[2010] SGHC 13

Case Number : Suit No 193 of 2009 (Registrar's Appeal No 345 of 2009)
Decision Date : 12 January 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Yeow Hiang and Thio Ying Ying (Kelvin Chia Partnership) for the plaintiff; Navinder Singh (Navin & Co LLP) for the defendant.
Parties : HSBC Institutional Trust Services (Singapore) Ltd (trustee of Suntec Real Estate Investment Trust) — Picket & Rail Asia Pacific Pte Ltd

Contract

Landlord and Tenant

12 January 2010

Judgment reserved.

Choo Han Teck J:

1 The plaintiff is the proprietor of Suntec City Mall ("the Mall"). By an agreement in writing ("the Lease"), the plaintiff leased the unit known as 3 Temasek Boulevard #02-106, Suntec City Mall ("the Unit") to the defendant for a term of 38 months from 1 December 2007 to 31 January 2011.

2 The defendant fell into arrears in rent by August 2008, and on 2 December 2008 it vacated the Unit prematurely. After giving the defendant an opportunity to affirm the Lease and rectify its breaches, the plaintiff terminated the Lease on 14 January 2009 when the defendant failed to comply. Subsequently, the plaintiff brought this action against the defendant for outstanding rent from August 2008 to 14 January 2009, service charge and other related fees. The total claim amount of \$233,232.06 was not disputed by the parties.

3 In its Defence and Counterclaim, the defendant alleged that the plaintiff had been in repudiatory breach of Clause 2 of the First Schedule of the Lease ("the First Schedule") and Clause 7.2 of the Lease. As such, the defendant argued that the plaintiff was liable to indemnify the defendant, by reason of an equitable set-off, for its loss. Clause 2 of the First Schedule provides for:

[t]he right to the free passage and running (subject to temporary interruption for repair alteration or replacement) of water sewage gas electricity telephone and other services or supplies to and from the **PREMISES** in and through the **PIPES** that now serve the **PREMISES** presently laid in on over or under other parts of **SUNTEC CITY** in common with the Landlord and all other persons having a like right.

Clause 7.2 of the Lease generally obliged the plaintiff to effect proper advertising and promotion of the Mall via a Promotion Fund. Pursuant to Clause 7.2.3, the defendant was required to contribute to the Promotion Fund on a monthly basis.

4 The defendant's case was that in rejecting its request for the provision of water and sewage

facilities into and out of the Unit, the plaintiff had breached Clause 2 of the First Schedule. I saw little merit in this argument. Clause 2 specifically states that the free passage of water and sewage facilities was subject to "pipes that *now* serve the premises *presently* laid in on over or under other parts of Suntec City" (emphasis mine). As there were no water and sewage pipes serving the Unit at the material time, it is clear that the defendant had no right to request for amenities that were not there. The plaintiff was accordingly under no legal obligation to lay new water and sewage pipes to the Unit. In any case Clause 45 of the Third Schedule of the Lease, which sets out the tenant's covenants, states that the defendant should not "cause any change in the wiring, ducting or the pipe arrangements of the electricity, water and air-conditioning services, plumbing and sewerage installations, telephonic or telegraphic connections without the prior consent of the Landlord".

5 The defendant's allegation relating to the plaintiff's breach of Clause 7.2 of the Lease was raised only during proceedings below. It appeared to be an argument on afterthought and nothing was put forward on this point by the defendant in its written submissions. It appears that no evidence had been adduced to show that the plaintiff had been remiss in effecting proper advertising and promotion of the Mall. In any case, Clause 7.2 specifically confers on the plaintiff not just the obligation of advertising and promoting the Mall, but also the right to decide without any restriction the extent, method and frequency of the relevant publicity. As stipulated in Clause 1.13 of the Lease, which Clause 7.2 incorporates, the promotional activities were to be carried out "as the Landlord shall deem fit from time to time". In my view, therefore, the defendant's case in this regard raised no arguable defence.

6 I also note that Clause 6.7 of the Lease provides for no abatement of rent payable by the defendant to the plaintiff "by reason of any claim by the Tenant against the Landlord whether for non-performance or breach of the Landlord's obligation hereunder or otherwise". Clause 13.1 of the Lease further provides that the defendant "shall pay to the Landlord promptly (time being of the essence) as and when due without demand deduction or set off all payments required to be made by the Tenant to the Landlord under the provisions of this Lease". These two clauses make it clear that notwithstanding its convictions that the plaintiff had breached its obligations to it, the defendant was bound under the terms of the Lease to continue to pay rent to the plaintiff.

7 More generally, in order for the defendant to terminate the Lease on the basis of repudiation by the plaintiff, it would have to show that the plaintiff had, by its words or conduct, indicated to the defendant that it did not intend to be bound by the Lease, or that the defendant had been deprived of a substantial part of the benefit to which it was entitled to under the Lease (see *Sports Connection v Deuter Sports GmbH* [2009] 3 SLR 883 at [62]). The defendant, however, failed to take either of these courses.

8 In the circumstances, the issue of set-off is moot. The defendant's appeal is hereby dismissed. I will hear parties on costs.