

Azuma Engineering (S) Pte Ltd v MEP Systems Pte Ltd
[2011] SGCA 10

Case Number : Civil Appeal No 170 of 2010
Decision Date : 07 April 2011
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : S Magintharan, James Liew (Essex LLC) and Arumugam Ravi (Ravi & Associates) for the appellant; Thomas Tan and Shabnam Arashan (Haridass Ho & Partners) for the respondent.
Parties : Azuma Engineering (S) Pte Ltd — MEP Systems Pte Ltd

Contract

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2010\] SGHC 282.](#)]

7 April 2011

Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

1 This is an appeal against the decision of the trial judge (“the Judge”) in *MEP Systems Pte Ltd v Azuma Engineering (S) Pte Ltd* [2010] SGHC 282 where he found that an option to purchase the leasehold of certain property extended by the Appellant to the Respondent had been automatically terminated pursuant to certain clauses in that option.

Factual Background

2 The Appellant was the leaseholder of a factory at 48 Lok Yang Way, Singapore 628647, which was owned by Jurong Town Corporation (“JTC”). The Appellant’s lease was due to expire on 17 January 2012. Under the terms of the lease, the Appellant applied to extend the lease for another 23 years (“the Extension”). In response, JTC granted informal “in-principle” approval through two letters dated 23 and 27 January 2006 respectively. Subsequently, JTC issued a letter of offer making the grant of the Extension subject to the Appellant’s fulfilment of certain terms and conditions. The Appellant accepted this conditional offer in a letter of acceptance dated 27 February 2006.

3 On 30 October 2008, the Appellant granted the Respondent an option to purchase the balance of its existing leasehold and the Extension (“the Option” [\[note: 11\]](#)). The Option was open for acceptance until 17 November 2008, 4.00pm and was subject, *inter alia*, to the following terms:

5.3 ... a confirmation for an extension of the said JTC Lease Term of 23 years from 18th January 2012 to 17th January 2035 which the Vendor has applied for and JTC is currently processing the same.

5.4 The Vendor obtaining a written confirmation letter from JTC for the approval and grant of the extension of the JTC Lease Term of 23 years as mentioned in clause 5.3 herein on such new and revised terms as the JTC shall impose and for avoidance of doubt if the extension of the JTC Lease granted is for a period of less than 23 years then the Purchaser shall be entitled to call off

the sale and purchase hereunder and thereupon the Vendor shall refund to the Purchaser all sums paid hereunder including GST, if paid.

...

23. In the event of JTC not granting or not issuing any confirmation letter as mentioned in clause 5.4 herein by 14th November 2008, the parties hereto shall mutually agree to an extension of time of one (1) month to enable the Vendor to obtain the said letter. If the said JTC's letter as mentioned under clause 5.4 is still not obtained or not granted, the sale and purchase herein shall become null and void. In such an event, the Vendor shall refund to the Purchaser the 10% of the purchase price paid within 7 days without demand, without any interest compensation or deduction whatsoever and each party shall bear its own costs and neither party shall have any claim or demand against the other party for damages, costs or otherwise whatsoever in the matter.

4 The Respondent exercised the Option on 17 November 2008 by signing and delivering the page marked "acceptance copy" to the Appellant together with 10% of the purchase price amounting to \$232,000 as the option deposit and \$16,240 as payment for Goods and Services Tax ("GST"). In the interim, because JTC had yet to grant its approval of the Extension by way of a written confirmation letter by 14 November 2008, the Appellant was granted (pursuant to cl 23) an extension of one month until 13 December 2008 to obtain the confirmation letter ("the Extended Deadline").

5 Whilst waiting for the Respondent to exercise the Option, the Appellant recommenced efforts to formalise JTC approval of the Extension. On 3 November 2008, JTC issued the Appellant an agreement to lease for the period of the Extension and an agreement to vary the existing lease ("the agreements" [\[note: 2\]](#)) for the latter's execution and stamping. The Appellant duly did so on 21 November 2008.

6 On 9 December 2008, JTC executed the agreements, but copies of these were not furnished to the Respondent until 19 December 2008. Two days later on 11 December 2008, JTC and the Appellant's representatives met and concluded an agreement that, *inter alia*, JTC would follow-up with the Respondent after completion of the sale and on the insertion of its (the Respondent's) name in the final agreement to lease ("the 11 December 2008 meeting"). The Appellant's solicitors then wrote a letter to the Respondent's then solicitors on 16 December 2008, the material part of which reads as follows (which letter also served to inform the Respondent of the 11 December 2008 meeting): [\[note: 3\]](#)

At our last meeting on 11 December 2008 with Mr Stephen Chiam of JTC, they have agreed to keep in view an Agreement to Lease and Variation of Lease in respect of the lease renewal and will pick up the matter with your clients as the new owners, after completion of the sale of the property so that the Agreement to Lease will be made in your clients' favour.

7 Pursuant to the 11 December 2008 meeting, JTC issued a letter dated 11 December 2008 ("the 11 December 2008 letter") addressed to the Appellant, which reads as follows: [\[note: 4\]](#)

CONFIRMATION OF TENURE FOR PTE LOT A0841100 AT 48 LOK YANG WAY SINGAPORE 628647

1 We refer to your enquiry on the tenure granted for the above premises.

2 This letter is to confirm that the lease extension of 23 years (with effect from 18 January 2012) had been approved and granted for the above premises.

It is also not without significance, in our view, that the 11 December 2008 letter was dated on the *same day* as the 11 December 2008 meeting (see also below at [\[16\]](#)). According to evidence from JTC, the letter was delivered to the Appellant some time in the week commencing 15 December 2008, but not after 18 December 2008. [\[note: 5\]](#)

8 On 19 December 2008, the Respondent's director informed the Appellant of the Respondent's intention "not to proceed" with the Option, [\[note: 6\]](#) citing the Appellant's breach of cl 23 as the reason. Subsequently, on 31 August 2010, the Respondent initiated Originating Summons No 306 of 2010 in the court below claiming, *inter alia*, a declaration that the Option had been terminated automatically pursuant to cl 23 and that it was entitled to a refund of the option deposit and GST paid.

Decision below

9 The Judge held that whether JTC had indeed agreed to the Extension was important, but what was fundamental was that the Appellant furnish proof of that to the Respondent, as agreed in cll 5.3, 5.4 and 23 of the Option. The written confirmation letter of JTC's approval of the Extension dated 11 December 2008 was only sent to the Appellant after 15 December 2008, and was thus not shown to the Respondent until after 18 December 2008. As such, the Respondent was entitled to rescind the contract.

10 Further, although the affidavit evidence showed that the Respondent had engaged the Appellant by replying when the latter insisted on performance of the Option, the contract had already been rescinded. The issue of waiver was therefore irrelevant.

The main issue

11 Many issues were canvassed in the respective parties' cases as well as in oral submissions before this court. In our view, however, the main issue centres, in the final analysis, on the construction of the 11 December 2008 letter and, in particular, whether it fulfils the requirements embodied in cll 5.3, 5.4 and 23 of the Option (reproduced above at [\[3\]](#)). It bears repeating that this letter constituted, in no uncertain terms, written confirmation by the JTC for the approval and grant of the Extension.

12 During oral submissions before this court, the Respondent rightly conceded that this particular letter fulfils the requirements of cl 5.4. Indeed, by obtaining the 11 December 2008 letter, the Appellant had, in the relevant language of cl 5.4 itself, "[obtained] a written confirmation letter from JTC for the approval and grant of the extension of the JTC Lease of 23 years as mentioned in clause 5.3 [of the Option]".

13 However, the Respondent argued that the 11 December 2008 letter was not "obtained" by the Appellant by the Extended Deadline pursuant to cl 23. In this regard, it bears setting out cl 23 in full once again:

23. *In the event of **JTC not granting or not issuing any confirmation letter** as mentioned in clause 5.4 herein **by 14th November 2008**, the parties hereto shall mutually agree to **an extension of time of one (1) month to enable the Vendor to obtain the said letter**. If the*

said JTC's letter as mentioned under clause 5.4 is still not obtained or not granted, the sale and purchase herein shall become null and void. In such an event, the Vendor shall refund to the Purchaser the 10% of the purchase price paid within 7 days without demand, without any interest compensation or deduction whatsoever and each party shall bear its own costs and neither party shall have any claim or demand against the other party for damages, costs or otherwise whatsoever in the matter. [emphasis in italics and bold italics added]

14 The Respondent's argument as noted in the preceding paragraph, whilst attractive at first blush, is, in our view, misconceived. It is true that the Appellant (as "the Vendor") must "obtain" the confirmation letter (here, the 11 December 2008 letter) from JTC in order to fulfil the requirement set out in cl 5.4 that satisfactory evidence of JTC's approval of the Extension be furnished. Nevertheless, the Extended Deadline (pursuant to cl 23) was intended to apply *not* to the receipt by the Appellant of the confirmation letter but, rather, *to the grant or issue of such a letter by JTC itself*. That there ought to be a deadline for the grant/issue of the letter is clear as the Respondent (as the purchaser of the Property) was obviously anxious that the Extension be confirmed one way or the other by JTC so that the matter would not be left hanging. Once the Respondent's interest in this particular regard is secured, compliance with cl 23 is evident.

15 This interpretation is supported by the opening words of cl 23 themselves (in particular, the words prior to the first parenthesis), where the focus is clearly on *the relevant confirmation (via letter) by JTC*. Though it is true that the word "obtain" is referred to towards the *end of the first* sentence and the word "obtained" is referred to in the *second* sentence of cl 23, this is, in our view, the result of infelicitous drafting. Adopting the word "obtain" in its natural meaning would be to actually *create* an (unnecessary) inconsistency between the opening words and the rest of clause and (more importantly) to undermine the clear purpose of cl 23. Instead, we note that *in addition to* the word "obtained", the word "*granting*" from the opening words of cl 23 is *repeated* (by way of the word "*granted*") in the *second* sentence of cl 23. These words (*viz*, "*granting*" and "*granted*") are more consistent with the interpretation we have adopted that takes into account the overall substance, spirit as well as context of the contract between the Appellant and the Respondent (bearing in mind, of course, that effect ought to be given to the language used in the contract itself). Looked at in this light, it is clear that all the conditions embodied in cll 5.3, 5.4 and (especially) 23 had been fulfilled.

16 As noted above, the 11 December 2008 letter was, by JTC's evidence, executed on or after 15 December 2008, after the Extended Deadline. Nevertheless, this is of no legal significance in the context of the present appeal since, as granting and approving authority, the JTC saw fit to date its letter of confirmation as if it had issued it on 11 December 2008. This remains JTC's prerogative and indeed, it did so because it had, in *every* respect, approved and granted the extension of the lease *well before* the 11 December 2008 letter and had (as noted above at [\[6\]](#)) in fact also met with the Appellant's representatives on 11 December 2008 itself, which meeting resulted, *inter alia*, in an agreement to the effect that JTC would follow-up with the Respondent after completion of the sale and the insertion of its (the Respondent's) name in the final agreement to lease. The letter, as counsel for the Appellant aptly put it, constituted mere *re*-confirmation of what had already been done, which was, in fact, one of the principal objectives of *the Respondent* in the context of the present transaction.

17 In so far as the argument that the 11 December 2008 letter was not received by the Respondent until after the Extended Deadline, counsel for the Respondent correctly conceded during oral submissions that there was *no* requirement in *any* of the clauses that *the Respondent* be *notified before* the Extended Deadline.

Conclusion

Conclusion

18 For the reasons set out above, we allow the appeal with costs, and with the usual consequential orders.

[\[note: 1\]](#) Appellant's Core Bundle, vol 2 ("2ACB"), pp 12-17

[\[note: 2\]](#) 2ACB, pg 18

[\[note: 3\]](#) 2ACB p 35.

[\[note: 4\]](#) 2ACB p 36.

[\[note: 5\]](#) 2ACB, p 29.

[\[note: 6\]](#) 2ACB, p 40.