

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
BAHAGIAN SIVIL
[NO GUAMAN SIVIL: WA-22NCvC-832-12/2020]**

ANTARA

LE APPLE BOUTIQUE HOTEL (KLCC) SDN BHD
(NO. SYARIKAT: 201101035131 (963265-D)) **... PLAINTIF**

DAN

PGCG ASSETS HOLDINGS SDN BHD
(NO. SYARIKAT: 201201009751 (983271-U)) **... DEFENDAN**

JUDGMENT

Introduction

- [1]** The dispute between the Plaintiff and the Defendant arose in the aftermath of a tenancy whereby the Plaintiff had tenanted a building owned by the Defendant at No 160, Jalan Ampang, 50450 Kuala Lumpur (“the property”). The property which was an office building was converted into a fully fitted hotel by the Plaintiff.
- [2]** The thrust of the Plaintiff’s claim is to be compensated for all the cost incurred in converting the property into a fully fitted hotel. By not being compensated the Defendant who had continued with the hotel business after the expiry of the Plaintiff’s tenancy, would be unjustly enriched.
- [3]** The dispute proceeded to a full trial whereby both sides called 2

witnesses each and relied on the agreed statement of facts, issues to be tried and Bundle of Documents as part of the proceedings.

Brief facts

- [4] The Tenancy Agreement (“the Agreement”) between the Plaintiff and the Defendant of the property was entered into in 18/10/2014. The salient feature of the Agreement was that the tenancy would be for 1 year but renewable 28 times.
- [5] Clause 7(b)(aa) provided for 28 consecutive 1 year renewals of the Terms of Tenancy at the written request of the Plaintiff no later than 2 months before the expiration of the term of tenancy, on the same term of the Agreement.
- [6] The Plaintiff contended that in converting the property from an office building to a fully fitted hotel the Plaintiff spent a sum of RM19, 644,322.00. The Defendant in their defense put the Plaintiff to strict proof of this expenditure incurred.
- [7] The Plaintiff contends that apart from the conversion cost the Plaintiff had to bear operational cost in managing the hotel for the period of 1/12/2013 to 30/11/2020.
- [8] Another salient fact which is undisputed in this case is that the Plaintiff had expressed an intention not to renew the tenancy beyond 30/11/2020.

The issues

- [9] In sieving through the evidence in this case the Court identified the main issue as being whether at the expiry of the tenancy the property must be restored to its original state by the Plaintiff.
- [10] The other issue tied to the main issue is whether the Defendant would be unjustly enriched if the Defendant continues with the hotel business.

Restoration to its original state

- [11] It is the Plaintiff's contention that the Defendant had prevented the Plaintiff to restore the premise in accordance with Clause 5(g) of the Agreement which stipulates that the property must be converted to its original state by the Plaintiff on the expiry of the tenancy.
- [12] In the Court's view this clause the purport of this clause is to safeguard the interest of the Defendant rather than the Plaintiff. This is clear from the heading of this clause which states **"The TENANT hereby covenants with Landlord as follows":-**
- [13] In the Court's view Clause 5(g) cannot be read in isolation as Clause 5(n) of the Agreement is also relevant for the issue at hand. This Clause stipulates :
- "that the TENANT shall on determination of the Term hereby created peacefully yield up vacant possession of the Demised premise and the fittings and fixtures contained therein to the Landlord in good and rentable repair and condition (fair wear and tear excepted":-**
- [14] Clause 5(n) envisages that the Plaintiff must surrender the possession of the property to the Defendant on the determination of the property. The Plaintiff admitted to having surrendered the property on not intending to continue with the tenancy.
- [15] However the Plaintiff contends that the surrender of the property to the Defendant was on the mutual understanding that if the Defendant wishes to continue with the hotel business the Plaintiff would be compensated for the cost of renovating the property into a hotel.
- [16] It is trite law that in contractual dispute the Court must decide the within the 4 corners of the Agreement itself. The Court is not permitted to look at events outside the Agreement. To do so would be to deviate from the actual intention of the parties as is captured in the Agreement.

- [17] The burden of proof lie upon the Plaintiff of not only proving the existence of such a mutual understating but also to prove that the mutual understanding acts as a collateral agreement varying the original terms of the Agreement.
- [18] The burden of proof upon the Plaintiff is stipulated under section 103 of the Evidence Act 1950:

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

ILLUSTRATIONS

- (a) ***A prosecutes B for theft and wishes the court to believe that B admitted the theft to C. A must prove the admission.***
- (b) ***B wishes the court to believe that at the time in question he was elsewhere. He must prove it.***
- [19] In this case the Plaintiff has clearly failed to discharge this burden of proof as provided under the law. Apart from oral assertion of the mutual understanding by the Plaintiff which the Court regards as self-serving the Plaintiff has not adduced any other evidence to prove the existence of the mutual understanding. The Court is not convinced that such a mutual understating exists.
- [20] Even if such a mutual understating exists, in the Court's view it does not amount to a collateral agreement varying the terms of the Agreement. All it amounts to is the Defendant not exercising its option to enforce the promise of the Plaintiff to convert the property to its original state.
- [21] In this case the Plaintiff can be regarded as the promisor and the Defendant the promisee on the matter of conversion of the property by virtue of section 2 of the Contracts Act 1950 which states as

follows :

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context-

- (a) when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal;**
- (b) when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise;**
- (c) the person making the proposal is called the "promisor" and the person accepting the proposal is called the "promisee";**

[22] Section 64 of the Contracts Act 1950 allows the promisee to dispense with the performance of the promise by the promisor. This provision provides as follows:

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

ILLUSTRATIONS

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B RM5,000. A pays to B, and B accepts, in satisfaction of the whole debt, RM2,000 paid at the time and place at which the RM5,000 were payable. The whole debt is discharged.

(c) A owes B RM5,000. C pays to B RM1,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d) A owes B under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of RM2,000. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B RM2,000, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of fifty cents in the dollar upon their respective demands. Payment to B of RM1,000 is a discharge of B's demand.

[23] The illustration to the above provision also states that if the promise prevents the promisor to carry out a promises as is asserted by the Plaintiff in this case, he is discharged from performing the promise.

[24] In short what the Defendant has opted for is to dispense with the promise of the Plaintiff to restore the property to its original state. This works in favour of the Plaintiff rather than against him. The Plaintiff is discharged from performing his promise to convert the property and cannot now insist it wants to do so.

Unjust enrichment

[25] In the case of *Dream Property Sdn Bhd v. Atlat Housing Sdn Bhd* [2015] 2 CLJ 453 the Court observed as follows:

"As stated by Goff & Jones: The Law Of Unjust Enrichment 8th edn. (para. 4-01), 'the law of unjust enrichment is concerned with transfers of value between claimants and defendants, and a claim in unjust enrichment is 'not a claim for compensation for loss, but for recovery of a benefit unjustly gained by a defendant at the expense of the claimant'."

- [26] In the Court's view the operative word in the above case is **"transfers of value"** and **"benefit unjustly gained"**. In this case from the evidence it is clear that the Plaintiff voluntarily surrendered the property to the Defendant by not exercising an option to renew the tenancy for another year.
- [27] This was not a case of the Defendant having terminated the tenancy of the Plaintiff. The Plaintiff should have demanded for compensation before surrendering the property to the Defendant. By filing this claim the Plaintiff is attempting to shut the stable door after the horses have bolted.
- [28] The Court also notes that there was no termination of the Agreement in this case but more of an expiry of tenancy at the end of the 1 year term. At the expiry of the tenancy the Plaintiff had opted not to renew the tenancy. All rights and obligations of the parties upon the expiry of the tenancy are contained in the Agreement.
- [29] As the Court had decided earlier, the Defendant had a right not to opt to enforce the obligations which were to be borne by the Plaintiff, and this includes converting the property to its original state. In summary it is the Court's view the possession and use of the property by the Defendant was not **"unjustly obtained"**.
- [30] Further the Court is of the view that running the hotel on the property does not necessarily mean that the Defendant were enriched unless it can be proven that the Defendant had profited in term of running the business. It can be inferred that the Plaintiff surrendered the hotel business because they were not profiting from it.
- [31] The Court is of the view there is no proof that use of the property as a hotel had earned a profit for the Defendant. It might as well be they have a hot iron rod in their hands. There is therefore no proof of **"transfer of value"** between the Plaintiff and the Defendant
- [32] In short the Court rules that there is no proof of unjust enrichment on

the part of the Defendant in carrying on with the hotel business. The Plaintiff has failed to prove that the Defendant enjoyed a benefit from running the hotel business which is a requirement under section 71 of the Contracts Act 1950 which states as follows:

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

ILLUSTRATIONS

(a) A, a tradesman, leaves goods at B's house by mistake B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Conclusion

[33] Based on the factors above the Plaintiff's claim against the Defendant is dismissed with a cost of RM150,000 to be paid by the Plaintiff to the Defendant.

Dated: 12 FEBRUARY 2025

(AKHTAR TAHIR)

Judge

High Court of Malaya, Kuala Lumpur

Counsel

For the plaintiff - Edward Kuruvilla & Nereen Kaur Veriah; M/s Kuruvilla, Yeoh & Benjamin

For the defendant - Muniandy Vestanathan, Fiona Culas & Gowri; Subbaiyah; M/s Andy & Co