A revised approach to interpreting the statutory requirements for the exercise of the right of forfeiture
Campbell Hospitality Pte Ltd and others v Marchmont Pte Ltd and another appeal
[2025] SGHC(A) 6; [2025] 1 SLR 816

I. Executive Summary

A tenancy is "determined" (i.e. terminated) when the landlord exercises his right to "forfeit" the lease. To exercise the right of forfeiture, the landlord must first satisfy the statutory requirements under section 18(1) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) ("**CLPA**"). Further, if the landlord accepts any rent from the tenant, such an act would constitute a waiver of the landlord's right to forfeiture.

In *Campbell Hospitality Pte Ltd and others v Marchmont Pte Ltd and another appeal* [2025] SGHC(A) 6 a landlord, Marchmont Pte Ltd ("**Marchmont**") and Campbell Hospitality Pte Ltd ("**Campbell**") had entered into a tenancy agreement in June 2021 (the "**Tenancy Agreement**"). Under the agreement, Marchmont was to lease to Campbell specific parts of a property (the "**Premises**") intended solely for hotel operations, with the lease to run for a three-year term from 1 August 2021 to 31 July 2024.

Due to various alleged breaches of the lease, Marchmont later issued three notices of breaches ("**NOBs**") and two notices of termination ("**NOTs**") to Campbell to forfeit the lease. However, Marchmont also continued to receive monthly payments from Campbell on a "without prejudice" basis, while maintaining that the lease had been terminated from the expiry of the specified period in the first NOT.

The dispute led to Marchmont filing a suit against Campbell in the General Division of the High Court (the "**HC**"). The HC allowed Marchmont's claims for possession of the Premises, and damages for breaches of the Tenancy Agreement. However, the HC did not allow Marchmont to claim for double rent from the expiry of the specified period in the first NOT. The HC also found that only the second NOB and NOT were valid, and that Marchmont had waived its right to forfeiture by accepting Campbell's rental payments until it commenced legal action. The HC further held that the first and third NOBs were invalid for non-compliance with section 18(1) of the CLPA.

Both parties then appealed the HC's judgment to the Appellate Division of the High Court ("**HC(A)**"). The HC(A) determined that Marchmont had valid grounds to forfeit the lease. It also held that Campbell should not receive relief from such forfeiture.

In its decision, the HC(A) also provided clarifications on the operation of the CLPA. Section 18(1) of the CLPA stipulates that before a landlord can exercise its right to forfeit a tenancy for breach of a lease covenant, the landlord must first serve a notice of breach "*specifying the particular breach complained off"*. The HC(A) held that a notice of breach is valid if the relevant breach(es) have been clearly identified and sufficiently particularised, so that adequate information is provided to the tenant to take appropriate remedial action. At the same time, however, only sufficiently particularised breaches (if unremedied) can be relied upon by a landlord for the purposes of complying with section 18(1).

Additionally, where a landlord seeks to terminate a lease involving a breach of a covenant, the landlord is effectively exercising a right of forfeiture. Such forfeiture can only be effected by commencement of a legal action or by physical re-entry; a notice of termination is insufficient in this respect.

II. Material facts

Starting from 14 December 2021, Marchmont issued various NOBs and NOTs to Campbell for

various breaches of the Tenancy Agreement, claiming that these breaches entitled Marchmont to forfeit the lease.

Marchmont issued the first NOB on 14 December 2021, after a joint inspection of the Premises. The NOB required Campbell to remedy a non-exhaustive list of breaches by the time specified in the notice. The breaches included the following:

a) breaches of the occupancy limits (*ie*, renting rooms to more than two persons per room);
b) turning off the air-conditioning in common areas;
c) smoking violations;
d) maintenance problems relating to toilets, lift vents, door closers, *etc*;
e) motorcycle parking infractions; and
f) denying Marchmont access to inspect suspected seepages in the rooms.

However, Marchmont's primary concern in the first NOB was Campbell's alleged breach of the occupancy limits, and improper use of the Premises as a workers' dormitory.

Campbell failed to remedy these breaches by the stated time. Marchmont then issued the first NOT on 20 December 2021. It stated that the lease would be terminated with effect from 23 December 2021. Campbell remained in possession of the premises even after the first NOB and NOT were issued.

Marchmont issued a second NOB on 18 April 2022, after it discovered certain alleged breaches by Campbell with regard to the insurance requirements stated in the Tenancy Agreement (the "**Insurance Requirements**").

Marchmont issued a third NOB on 23 June 2022, due to Campbell's alleged failure to adequately maintain and repair the Premises, and to ensure adequate manpower and security there. The third NOB included a further non-exhaustive list of breaches, which mainly related to maintenance and cleanliness issues. Specific locations and problems were identified, with a mix of general and specific breaches set out. Marchmont also gave Campbell one month to remedy the breaches in the third NOB.

After Campbell failed to remedy the breaches identified in the second and third NOBs, Marchmont issued a second NOT on 13 July 2022. The second NOT stated that as the breaches identified in the second and third NOBs had not been remedied, the lease would be terminated pursuant to clause 10(1) of the Tenancy Agreement with effect from 21 July 2022.

Despite the NOBs and NOTs being issued, from January 2022 onwards Campbell continued to make monthly payments into Marchmont's bank account, which Marchmont claimed was on a "without prejudice" basis. Marchmont maintained that the lease had been terminated with effect from 23 December 2021 (i.e. three days after the first NOT was issued). It further claimed that payments made by Campbell were off-set for double rent payable pursuant to section 28(4) of the CLA, on account of Campbell holding over the Premises even after the termination of the lease.

Marchmont eventually commenced legal action against Campbell in December 2022, claiming for possession of the Premises, damages, and double rent or double the value for the period of holding over. The HC determined the issues of whether Marchmont had validly exercised its right to forfeit the tenancy and re-enter the Premises, and whether Campbell was liable for double value under section 28(4) of the CLA during the period of holding over after the determination of the tenancy. The HC found that only the second NOB and NOT were valid, but that Marchmont had waived its right to forfeiture by accepting Campbell's rental payments until Marchmont commenced legal action against Campbell. This resulted in an appeal to the HC(A).

III. Issues

On appeal, the HC(A) discussed the following issues:

a) whether Marchmont's NOBs and NOTs were valid;

b) whether the NOTs validly forfeited the tenancy or whether the tenancy was only forfeited upon commencement of legal action;

c) whether Marchmont had waived its right of forfeiture;

d) whether Campbell should have been granted relief against forfeiture;

e) whether Campbell was liable for double the value or rent.

A. Whether Marchmont's NOBs and NOTs were valid

Section 18(1) of the CLPA stipulates that before a landlord can exercise its right to forfeit a tenancy for breach of a lease covenant, the landlord must first serve an NOB "*specifying the particular breach complained off*". The HC(A) first stated that on a plain reading, this requirement to specify does not require that each and every observed breach must be specified at the same time in a single NOB. The HC(A) then addressed this question: will an NOB be invalid just because any one of the alleged breaches is insufficiently particularised?

There were two possible approaches in response to this question. The first approach (from *Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd and others and another suit* [1998] 2 SLR(R) 258 states that the entire NOB (and any ensuing NOT) will be invalid if any single breach complained of among multiple breaches is insufficiently particularised. The second approach (from *Fox v Jolly* [1916] 1 AC 1) states that an NOB is valid for any breach (among multiple breaches) that is sufficiently particularised.

The HC(A) adopted the second approach. It agreed with Marchmont that this was more aligned with the statutory intent and interpretation of section 18(1) CLPA. The first approach was overly technical, and was not consistent with a plain reading of section 18(1), which merely requires that any "particular breach" be specified.

The requirement to provide sufficient particulars also offered adequate practical protection for tenants. A non-exhaustive list of breaches would not render an NOB invalid, so long as the relevant breach(es) have been clearly identified and sufficiently particularised. This means that the tenant is still ensured a degree of protection from arbitrary, vague or unclear allegations of breach and retains the right to challenge insufficient or unclear NOBs.

As such, all of Marchmont's NOBs were valid under the HC(A)'s preferred approach as they were largely adequately specified and particularised. Although the HC had found that the first NOB to be insufficiently particularised, the HC(A) acknowledged that the first NOB was sufficiently particularised as to Campbell's breach of the critical occupancy limit requirement. The HC(A) also found that the third NOB was sufficiently particularised even though it contained a non-exhaustive list of breaches, as there were still other breaches that were sufficiently particularised so as to enable Campbell to understand with reasonable certainty what it was required to remedy.

B. Whether the NOTs validly forfeited the tenancy or whether the tenancy was only forfeited upon commencement of legal action

The HC(A) first held that any contractual right to prematurely terminate the lease (i.e. earlier than when it would "naturally" be determined) which is contingent on any default by the tenant, is the exercise of the landlord's right to forfeit the lease. As such, the landlord's exercise of its contractual right to terminate remains subject to section 18(1) of the CLPA. Further, whether a particular act amounts to forfeiture is determined by two questions: (a) whether it is a final and positive act which cannot be retracted; and (b) whether it is accompanied by an intention to forfeit the lease.

It was agreed that Marchmont had attempted to forfeit the lease, and that these attempts were subject

to section 18(1) of the CLPA. The next question was whether Marchmont's NOTs validly forfeited the tenancy, or whether the tenancy was forfeited only upon commencement and service of Marchmont's service of its original suit in the lower court.

Marchmont argued that a tenancy can be validly forfeited by relying solely on a contractual termination clause. It argued that a lease is both contractual and proprietary in nature: the effect of the valid exercise of a termination clause is that the contractual right of the tenant is terminated, while the tenant's proprietary right is forfeited upon the landlord's compliance with section 18(1) of the CLPA. Thus, Marchmont maintained that the lease would have been (contractually) determined at the date of termination specified in the termination notice, and whether the landlord takes further steps after the issuance of the termination notice does not change the date of determination of the tenancy.

Campbell conversely argued that where a landlord seeks to terminate a lease involving a breach of a covenant, the landlord is effectively exercising a right of forfeiture, and forfeiture can only be effected by action (ie, legal proceedings) or by physical re-entry. This was on the basis that a lease creates a property right in favour of the tenant, and that a termination notice lacks sufficient finality to extinguish a property right; it is also not subject to any statutory requirements as to what it should contain.

The HC(A) agreed with Campbell's approach, which was in line with settled law. Marchmont had suggested a novel proposition which (as Marchmont conceded) was not supported by any authority. Its position relied primarily on the argument that the exercise of a landlord's contractual right to terminate is sufficient to bring the tenant's proprietary interest to an end. However, this would represent an unwarranted extension of the established common law position, which has not gone so far as to recognise a termination notice as being sufficient to operate as forfeiture.

Thus, the HC(A) held that Marchmont had not validly forfeited the tenancy by issuing the NOTs. The HC(A) held that it was only in commencing and serving its suit on Campbell that Marchmont had carried out an act of "final determination" in exercising its right to forfeiture, subsequent to which no act could operate as a waiver.

C. Whether Marchmont had waived its right of forfeiture

The HC(A) then considered whether Marchmont's receipt of Campbell's payments amounted to a waiver of Marchmont's right of forfeiture. The HC(A) held that the mere acceptance of payment of money by the landlord from the tenant does not inevitably or conclusively establish waiver, unless the payment is indeed tendered and accepted as rent and the landlord also knew of the underlying breach. Waiver by election requires clear and unequivocal communication, and mere silence or inaction alone is insufficient.

Here, Marchmont did not unequivocally communicate any such election, let alone remain silent or do nothing. Instead, it had repeatedly voiced its position by stating in its correspondence with Campbell that the Tenancy Agreement had been terminated and Campbell's payments were only accepted with the qualification that they would be applied by way of set-off to double rent. Further, Campbell had transferred the payments directly into Marchmont's account. Marchmont's receipt of Campbell's payments would amount to mere inaction or passivity at best, because it had not made any demand for the payment of rent under the Tenancy Agreement. Marchmont had always maintained that the tenancy had been terminated.

The HC(A) also determined that the doctrine of appropriation did not apply here. The doctrine of appropriation operates where several debts are due from the debtor to the creditor. It allows the debtor, when making a payment, to appropriate the money paid to a particular debt or debts, and if the creditor accepts the payment so appropriated, he must apply it in the manner directed by the debtor. However,

the HC(A) noted that the present case was not one where several distinct debts were due from Campbell to Marchmont: only one sum was due. Further, it was the characterisation of that debt that was in dispute. Campbell either owed Marchmont double rent or rent simpliciter during the period of (alleged) holding over, not both. If the doctrine of appropriation were applicable in such a case where there is a dispute as to the nature of the debt, it would allow the debtor to make a payment, unilaterally assert its position as to the nature of the debt, and purely on that basis prevail in its assertion as to the nature of the debt.

Campbell's argument would allow a tenant to make payments to the landlord, unilaterally assert in correspondence that these payments were being tendered as rent, and then prevail in the tenancy dispute by invoking the doctrine of appropriation. The landlord would not be able to deny that these unilateral payments were rental payments except by returning them. The HC(A) considered this position unsupportable.

D. Whether Campbell should be granted relief against forfeiture

Section 18(3) of the CLPA states the court may grant or refuse relief from forfeiture, having regard to the proceedings and conduct of the parties under sections 18(1) and (2) and to all other circumstances, as it thinks fit.

The HC(A) considered that the HC had indeed given due consideration to all the relevant circumstances in exercising his discretion not to order relief from forfeiture. It saw no reason to differ from the HC's analysis of the seriousness of Campbell's breaches as well as the paucity of evidence to show that Campbell had rectified the breaches.

E. Whether Campbell was liable for double the value or rent

Section 28(4) of the CLA provides that every tenant holding over after the determination of his tenancy shall be chargeable, at his landlord's option, with double the amount of his rent until possession is given up by him, or with double the value during the period of detention of the land or premises.

The HC(A) rejected Campbell's argument that Marchmont had to demonstrate that Campbell had the intention to refuse delivery of the premises to Marchmont, with knowledge that Campbell had no right to remain in possession. It would suffice that Campbell intended to refuse delivery of possession of the Premises to Marchmont. Campbell knew that Marchmont was terminating the tenancy and seeking possession of the Premises. Campbell could not reasonably contend that it knew or honestly believed that it had any right to remain in possession, more so where Campbell would have known that it had not remedied all the alleged breaches.

As Marchmont had only exercised its right to forfeit the tenancy by commencing and serving suit on Campbell on 28 December 2022, Marchmont was therefore entitled to claim double the value or rent from 29 December 2022.

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