IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 23

Originating Application No 1083 of 2024

Between

FXA Investment Holdings Pte Ltd

… *Applicant*

And

(1) Tan Wei Cheong (Chen Weizhang) (in his capacity as a joint and several liquidator of Fusionex Pte Ltd (in liquidation))
(2) Lim Loo Khoon (in his capacity as a joint and several liquidator of Fusionex Pte Ltd (in liquidation))
(3) Fusionex Pte Ltd (in liquidation)

… *Respondents*

JUDGMENT

[Insolvency Law — Winding up — Proof of debt — Liquidators rejecting proof of debt — Whether liquidators' decision should be reversed]

[Landlord and Tenant — Creation of tenancy — Existence and nature of lease — Whether concept of repudiation and acceptance apply to leases — Whether lease was terminated]

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FXA Investment Holdings Pte Ltd
v
Tan Wei Cheong (in his capacity as a joint and several liquidator of Fusionex Pte Ltd (in liquidation)) and others

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General Division of the High Court — Originating Application No 1083 of 2024
Audrey Lim J
22 January 2025

12 February 2025 Judgment reserved.

Audrey Lim J:

1 This is the application of FXA Investment Holdings Pte Ltd ("FXA") to reverse and/or vary the decision of the liquidators ("Liquidators") of Fusionex Pte Ltd ("Company") in rejecting FXA's proof of debt for $270,057.40 submitted on 10 June 2024 (the "POD"). The Company was wound up under s 125(1)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed), pursuant to a special resolution passed by its sole shareholder (see *Re Fusionex Pte Ltd (Resorts World at Sentosa Pte Ltd, non-party)* [2024] 4 SLR 956 ("*Re Fusionex*")).

Background

2 FXA is wholly owned by FXA Holdings Sdn Bhd ("FXA MY"). On 5 July 2022, FXA entered into a lease agreement with SG OGS Pte Ltd

("Landlord") for the lease of the premises on 1 George Street #15-05 Singapore 049145 (the "Premises") from 1 November 2022 to 31 October 2025 ("Master Lease"). The Master Lease stipulated the "Monthly Rent" as $26,370 and the "estimated Monthly Service Charge" as $3,164.40.[1]

3 FXA claims it was incorporated solely for the purpose of entering into the Master Lease for the Premises to be used and occupied solely by the Company.[2] In this regard, FXA claims the following:[3]

(a) As part of a back-to-back arrangement with the Company, FXA entered into the Master Lease for the Premises to be sub-let and used by the Company as its office premises ("Sub-Lease"). This arrangement was on the condition that the Company would pay FXA the rent and other expenses incurred under the Master Lease and an administrative fee of $1,500 per month (which FXA referred to as a "Gentlemen's Agreement"). The administrative fee ("Admin Fee") was to cover FXA's administrative expenses as it was set up solely to secure the lease of the Premises on the Company's behalf.

(b) Pursuant to the Gentlemen's Agreement, it was agreed that the Company would pay FXA: (i) all monthly rent and related expenses incurred under the Master Lease of the Premises on a back-to-back basis; and (ii) the monthly Admin Fee for FXA's assistance in facilitating the Sub-Lease.

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1 Tahyas Jeti Anak Kolony's affidavit dated 18 October 2024 ("FXA's Affidavit") at pp 69–70.

2 FXA's Affidavit at [5].

3 FXA's Affidavit at [16]–[17].

4 The Company is wholly owned by a Malaysian-incorporated company ("Fusionex MY") and both are in turn indirect subsidiaries of FusioTech Holdings Sdn Bhd (the "Holding Company"). All three entities are part of the Fusionex group of companies (the "Fusionex Group"). The day-to-day operations of the Fusionex Group were previously managed by the management team of the Holding Company.[4] The background to the Company's management and how it came to be wound up are set out in *Re Fusionex*. In particular, in early December 2023, the management team of the Holding Company abruptly resigned and refused to effect a proper handover of financial records and other company documents to the new management team. Consequently, the Company filed an application for winding up and it was wound up on 26 January 2024 (see *Re Fusionex* at [3]–[6] and [23]).[5] The Liquidators were then appointed, and the following transpired:

(a) On 29 January 2024, the Liquidators informed FXA that they had been appointed as liquidators of the Company. The Liquidators also informed FXA that they wanted to find out more about the lease of the Premises (which they understood from one Mr Low Woei Hau ("Low", an ex-employee of the Company) that FXA was the named tenant) and to view the Premises.[6]

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4 Tan Wei Cheong's affidavit dated 1 November 2024 ("Liquidators' Affidavit") at [9(1)]; FXA's Affidavit at [6]–[7].

5 Liquidators' Affidavit at [9(1)(iii)]–[9(1)(v)].

6 FXA's Affidavit at [8] and p 98 (Liquidators' 29 January 2024 e-mail to FXA); Liquidators' Affidavit at [9(3)].

(b) Between 29 January and 10 June 2024, the Liquidators corresponded with FXA seeking further information and documentation on FXA's claim that it had sub-let the Premises to the Company.[7]

(c) On 10 June 2024, FXA submitted its POD for outstanding rent, service charge, electricity charge, and an agency fee (being the commission paid to a property agent to secure a new tenant for the Premises ("Agency Fee")).[8]

(d) On 6 September 2024, the Liquidators further queried FXA on its claims in the POD and requested FXA to substantiate the claims with supporting documents. FXA responded on 20 September 2024.[9]

(e) On 27 September 2024, the Liquidators informed FXA that it was rejecting FXA's POD in totality on the basis that they had not received "sufficient supporting documents" for FXA's claim against the Company.[10]

5 FXA thus filed the present application on 18 October 2024.

Parties' respective cases

6 FXA argues that, contrary to the Liquidators' claim, it had been forthcoming in providing information and documents requested by the Liquidators.[11] FXA, in support of its argument that it and the Company had

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7 Liquidators' Affidavit at [9(4)]; FXA's Affidavit at pp 133–157.

8 FXA's Affidavit at [9] and pp 100–124; Liquidators' Affidavit at [9(5)].

9 FXA's Affidavit at pp 129–132; Liquidators' Affidavit at [9(6)].

10 FXA's Affidavit at [10]–[11]; Liquidators' Affidavit at [9(7)] and pp 45–46.

11 FXA's Affidavit at [13].

entered into the Sub-Lease and the Gentlemen's Agreement, claims that the Company occupied and utilised the Premises to conduct its business, and that between December 2022 to November 2023 the Company complied with the Gentlemen's Agreement and paid FXA on the invoices FXA issued to the Company.[12] These payments were received by either FXA or by FXA MY on FXA's behalf. However, in December 2023, the Company abruptly ceased to pay FXA the monthly rental and related expenses, and the Company also did not issue any notice of termination. Due to the Company's abrupt failure to pay rent, FXA had no choice but to engage a property agent to find a replacement tenant to prevent further losses.[13]

7 Consequently, FXA submitted its POD to claim for the losses it suffered due to the Company's sudden decision to cease payments to FXA. This comprised outstanding rent, service charge and Admin Fee (from December 2023 to June 2024), electricity charges (from January to April 2024) and the Agency Fee.[14]

8 The Liquidators argue essentially the following. FXA had failed to establish the existence of the Sub-Lease and the Gentlemen's Agreement, despite the Liquidators' repeated requests for supporting particulars and documents. It is unlikely the Sub-Lease existed because it would have rendered FXA in breach of the Master Lease which expressly prohibited FXA from sub-letting the Premises.[15] Finally, any purported Sub-Lease would have been

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12 FXA's Affidavit at [19]–[20].

13 FXA's Affidavit at [21]–[24].

14 FXA's Affidavit at [9] and [25] and pp 100–124; Liquidators' Affidavit at [9(5)].

15 Liquidators' Affidavit at [10]–[16].

terminated by FXA in or around January or February 2024, or not renewed after December 2023 as the Company had given notice to determine the Sub-Lease.[16]

Issues to be determined

9 FXA's application is made pursuant to r 132(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020. The parties do not dispute that the court hears this application *de novo*. In such applications, the applicant is not restricted to the material it had placed before the liquidator and the court may vary the liquidator's decision in any way it thinks necessary in the light of the evidence before the court (see *Rich Construction Co Pte Ltd v Greatearth Construction Pte Ltd (in liquidation) and others and another matter* [2024] 5 SLR 570 at [17]; *Fustar Chemicals Ltd v Ong Soo Hwa (liquidator of Fustar Chemicals Pte Ltd)* [2009] 1 SLR(R) 844 at [27]; *ERPIMA SA v Chee Yoh Chuang and another* [1997] 1 SLR(R) 923 at [6]).

10 The burden of proof, however, remains on FXA (the purported creditor) to prove the debt on a balance of probabilities. In considering a proof of debt, the liquidator is not bound by the documentation provided by the purported creditor and is entitled to go behind them to determine the veracity of the debt claimed. That said, a liquidator must have a reasonable basis on which to query a debt that appears to be genuine (see *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 at [13] and [20]).

11 The key issue to be determined is whether there was a Sub-Lease and Gentlemen's Agreement as alleged by FXA whereby the Company would sub-lease the Premises from FXA in consideration for certain monthly payments

[16] Liquidators' Affidavit at [18]–[24].

(see [3] above). Assuming this issue is decided in FXA's favour, the next issue is whether the Sub-Lease continued to subsist after December 2023. Finally, I determine whether the POD should be rejected or admitted in whole or in part.

Existence of the Sub-Lease and the Gentlemen's Agreement

12 I am satisfied that FXA has proven on a balance of probabilities the existence of the Sub-Lease and the Gentlemen's Agreement. The evidence shows the Premises were used and occupied by the Company and it consistently made payments to FXA for monthly rent, service charge and the Admin Fee.

(a) FXA exhibited a screenshot of what appeared to be the Company's website stating the Company's Singapore office as the Premises, and a Google search conducted on the Company on 13 October 2024 which showed the Company's address as the Premises. The Liquidators do not dispute these.[17]

(b) Likewise, the Liquidators do not dispute FXA's assertion that the electronic screen at the lobby of the building where the Premises were located, the directory signage at level 15 of the building, and the banner displayed inside the Premises, reflected the Company's name pertaining to the Premises.[18]

(c) When the Liquidators first introduced themselves to FXA on 29 January 2024 as the Company's liquidators, they stated that it was the Company's own ex-employee, Low, who had informed them that the

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17 FXA's Affidavit at [19(c)] and [19(d)] and pp 161, 163–164; Minute sheet dated 22 January 2025 ("22/1/25 Minute Sheet").

18 FXA's Affidavit at [19(b)]; 22/1/25 Minute Sheet.

Premises were occupied by the Company.[19] Indeed, the Liquidators do not dispute FXA's assertion that the Company and its staff occupied the Premises and utilised the space as the Company's office for the conduct of its business sometime in 2022 until around January 2024.[20]

(d) The correspondence between FXA and the Liquidators showed that the furniture and other items which the Liquidators claimed belonged to the Company were situated at the Premises. For instance, the Liquidators had liaised with FXA on the removal of the Company's property from the Premises even in March and May 2024.[21]

(e) Notably, FXA had exhibited monthly invoices addressed to the Company, for the period from December 2022 to November 2023, for rental, service charge, goods and services tax and the Admin Fee, and which amounts corresponded to the invoices rendered by the Landlord to FXA (save for the Admin Fee which was not a term of the Master Lease).[22] FXA also exhibited bank statements to show the Company had made those payments to FXA MY for the period from December 2022 to March 2023, and to FXA for the period from April to November 2023.[23] Whilst payments for the initial months were made by the Company to FXA MY instead of FXA, the fact remains that the Company made regularly payments for the Premises which were eventually paid to FXA. The Liquidators accept that the Company was

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19 Liquidators' Affidavit at [9(3)]; FXA's Affidavit at [19(f)] and p 156.

20 FXA's Affidavit at [19(a)]; 22/1/25 Minute Sheet.

21 FXA's Affidavit at [19(e)] and pp 143 and 148.

22 FXA's Affidavit at pp 175–198.

23 FXA's Affidavit at [21] and pp 166–173.

invoiced by FXA for the monthly rent, service charge and Admin Fee, and paid them for the period from December 2022 to November 2023.[24]

13 I do not find it perplexing, contrary to the Liquidators' assertion,[25] that there was no written agreement between FXA and the Company for the Sub-Lease, given the supporting evidence (at [12] above) which amply point to the existence of the Sub-Lease. That there was no written agreement is not unusual nor surprising given the relationship between the two entities at the material time. Ms Quek Yin Ting ("Quek") was the sole shareholder of FXA from August 2022 to September 2024 and was also the sole director of both FXA and the Company until her resignation in September 2024 and December 2023 respectively.[26] As FXA explained to the Liquidators (in their correspondence), the Sub-Lease and the Gentlemen's Agreement were concluded orally given the then friendly relationship between the Company and FXA.[27]

14 In this regard, the Liquidators' argument that FXA had "expressly admitted" to there being no actual sub-lease agreement between the Company and FXA[28] is disingenuous. FXA had on 30 January 2024 informed the Liquidators that "there [was] no agreement made between [the Company] and FXA, as it was a gentleman arrangement for [the Company] to pay off the back to back rental to FXA" as a response to the Liquidators' earlier request to FXA

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24 22/1/25 Minute Sheet.

25 Liquidators' Affidavit at [12].

26 Liquidators' Affidavit at [9(1)], [9(3)] and pp 63, 66 and 70; FXA's Affidavit at p 148; 22/1/25 Minute Sheet.

27 FXA's Affidavit at pp 130, 145 and 150.

28 Liquidators' Written Submissions dated 15 January 2025 ("LWS") at [45].

to provide them with a *copy* of the tenancy agreement.[29] At best, FXA's response was to explain that there was no *written* agreement, but it had nevertheless maintained very early on (in its correspondence to the Liquidators) that there was a "gentleman arrangement".

15 Even if FXA could not articulate the precise date on which the Sub-Lease was entered into and the Gentlemen's Agreement was formed, or the representatives of the Company and FXA who were involved in the discussions leading to the agreements, this was not fatal to FXA's claim of the existence of the Sub-Lease and the Gentlemen's Agreement. It was clear the parties (FXA and the Company) intended to create binding legal relations. They acted on the agreements and the Liquidators accept that the Company occupied the Premises and paid FXA's invoices for monthly rent, service charge and the Admin Fee for the period from December 2022 to November 2023. The Company ceased to make payments thereafter only because the previous management team of the Holding Company resigned, and the Company was then wound up. Consistent with the parties' intentions, FXA immediately informed the Liquidators (on the same day they informed FXA of their appointment as the Company's liquidators) of the Company's failure to pay rent since December 2023.[30]

16 Hence, contrary to the Liquidators' assertion that there was no intention to create legal relations (between FXA and the Company) and the terms of the Sub-Lease and Gentlemen's Agreement were unclear,[31] the documentary evidence of both parties' conduct shows otherwise. FXA had also previously explained to the Liquidators (in its e-mail dated 23 February 2024) that it rented

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29 FXA's Affidavit at pp 154–155.

30 FXA's Affidavit at pp 141, 147, 149, 151 and 153–155.

31 22/1/25 Minute Sheet.

the Premises essentially on the Company's behalf, as the Company could not obtain approval from its ultimate shareholders for a long term expense such as a three-year tenancy and the Landlord would not have agreed to lease the Premises on a short term month-to-month basis.[32]

17 Next, the Liquidators claim the Sub-Lease would have rendered FXA in breach of the Master Lease which prohibited the assignment or sub-letting of the Premises.[33] However, that in itself did not make the Sub-Lease invalid or void (see *Jubilee Electronics Pte Ltd and others v Tai Wah Garments and Knitting Factory Pte Ltd* [1996] 1 SLR(R) 352 ("*Jubilee Electronics*") at [32] and [36]). Whilst *Jubilee Electronics* dealt with a case of a prohibition on assignment of a property, in my view, it would apply equally to a prohibition on sub-letting. Importantly, any breach of the Master Lease is a matter between the Landlord and FXA. Specifically, cl 6.1.2 of the Master Lease stipulated that, on a default by FXA under the Master Lease, the Landlord had the right to re-enter and re-possess the Premises whereupon the Master Lease would terminate. But there is no evidence that the Master Lease had been terminated or forfeited by the Landlord (such as by the Landlord re-possessing the Premises) because of the sub-letting by FXA. On the contrary, the evidence suggests the Landlord knew of the sub-letting. The Company's name was expressly stated at the header of every page of the Master Lease.[34]

18 Additionally, the Liquidators point to other matters to raise doubts on the existence of the Sub-Lease and the Gentlemen's Agreement. For instance, the Company's registered address stated in the Accounting and Corporate

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32 FXA's Affidavit at pp 149–150.

33 Liquidators' Affidavit at [13]–[15].

34 FXA's Affidavit at [18]; 22/1/25 Minute Sheet.

Regulatory Authority's Business Profile Search was not the address of the Premises. There was also inconsistency in FXA's initial position to the Liquidators (in its e-mail dated 18 March 2024) that the Sub-Lease was a month-to-month *co-tenancy* (thereby suggesting that the purported agreement was for FXA and the Company to share the Premises) and FXA's position in the present application that the Company was a sub-tenant.[35]

19 Nevertheless, I do not find any of the above matters tilted the balance in the Liquidators' favour. Although the Company did not reflect its registered address as the address of the Premises, the Liquidators accept that the Company occupied the Premises and paid the monthly rent, service charge and Admin Fee to FXA.

20 As for the description of the Sub-Lease as a "month-to-month co-tenancy" in FXA's e-mail to the Liquidators, this must be read in the context of the friendly relationship between, and commonality in management of, FXA and the Company at the material time (see [13] above). FXA had explained that the oral agreement between it and the Company could alternatively have amounted to a month-to-month co-tenancy as the Company had been in occupation of the Premises and making monthly rental payments to FXA (until the Company's new management took over in December 2023 and abruptly ceased payment without notice).[36] Whilst FXA referred to a "co-tenancy" in its 18 March 2024 e-mail, the weight of the evidence (particularly that the Company paid the monthly rent, service charge, and goods and services tax, all of which corresponded to the amounts charged by the Landlord to FXA) pointed to the Company being a sub-tenant of FXA.

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35 Liquidators' Affidavit at [16(1)(i)] and [16(2)(iii)] and p 74.

36 FXA's Affidavit at pp 146 and 150.

21 In the above regard, I complete the analysis by finding that the Sub-Lease was a month-to-month tenancy, as FXA had itself described. This can be gleaned from the intent of FXA and the Company at the material time, based on FXA's explanation to the Liquidators in its e-mail dated 23 February 2024 (see [16] above). The Sub-Lease between the Company and FXA would not have been for an outright three-year fixed-term akin to the term of the Master Lease. As FXA explained, the Company's ultimate shareholders did not approve of the Company being tied down to a long-term expense. Hence, the three-year lease of the Premises was secured by FXA instead, with the Company being FXA's tenant and reimbursing FXA for the rent and expenses due for the Premises under the Master Lease (plus the Admin Fee).

22 Importantly, regardless of whether the Sub-Lease was a month-to-month tenancy or for a fixed term of a longer period, the tenancy would continue until it is determined (a point I will return to below).

23 Finally, contrary to the Liquidators' claim that FXA had not been forthcoming with information or documents to support the POD,[37] the correspondence shows FXA had been cooperative in answering questions and furnishing information to the Liquidators. Admittedly, FXA did not furnish the monthly invoices addressed to the Company for the period from December 2022 to November 2023 and the corresponding evidence of payment by the Company (see [12(e)] above) until the present application was filed. Nevertheless, the Liquidators knew the Company had occupied the Premises by virtue of its property being situated there (see [12(d)] above) and has (before me) accepted that it did occupy the Premises. As the court hears the current application *de*

[37] Liquidators' Affidavit at [11].

novo, the invoices and evidence of corresponding payment by the Company clearly support the existence of the Sub-Lease between it and FXA.

24 In the round, I find that FXA has discharged its burden of proving the existence of the Sub-Lease and the Gentlemen's Agreement on a balance of probabilities.

Whether the Sub-Lease and the Gentlemen's Agreement were determined

25 The Liquidators argue that even if the Sub-Lease and the Gentlemen's Agreement existed, they would have been determined after December 2023 as the Company had surrendered the lease and/or given notice to quit by abandoning the Premises.[38] They argue in the alternative that FXA had itself determined the Sub-Lease in or around January or February 2024. This is because FXA had re-entered and re-possessed the Premises by January 2024, had arranged for interested tenants to view the Premises, and had indicated that it was only willing to allow the Liquidators to visit the Premises in its presence.[39] Mr Tiong (the Liquidators' counsel) submits that, as the Sub-Lease was a monthly tenancy, FXA is only entitled to the monthly rent, service charge and Admin Fee up to the time FXA terminated the Sub-Lease, and an additional one month thereafter.[40]

26 The Liquidators rely on cl 6.1.2 of the Master Lease (which provided that the Master Lease would terminate immediately on the Landlord's re-entry and taking possession of the Premises if FXA were in default) to support their argument that the Sub-Lease and the Gentlemen's Agreement were terminated

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38 Liquidators' Affidavit at [18]–[21]; LWS at [55]–[57].

39 Liquidators' Affidavit at [22]–[24]; LWS at [58]–[61].

40 22/1/25 Minute Sheet.

when FXA re-entered the Premises. They argue that as FXA had claimed the Sub-Lease was a "back-to-back" agreement with the Master Lease, cl 6.1.2 thus applied to the Sub-Lease.[41] However, there is no evidence that the Sub-Lease contained such a clause, and there is also no reason to imply one. Importantly, the Liquidators' argument taken to its logical conclusion must mean that all the other terms in the Master Lease would likewise apply to the Sub-Lease. This would include cl 6.1.4 which states the tenant would have to indemnify the landlord for all losses and damages (*including loss of rent and service charge which would have been payable by the tenant if the term of the lease had been completed*) suffered by the landlord as a result of the landlord exercising its right of re-entry.[42] Consequently, assuming cl 6.1.4 were to apply, the Company would still be liable for at least some of the amounts claimed for in FXA's POD. Thus, I find that cl 6.1.2 does not assist the Liquidators.

27 I also find no evidence to support the Liquidators' claim that the Company had surrendered or given notice to quit the Sub-Lease. This is clear from FXA's e-mails to the Liquidators. On 23 February 2024, FXA asked for a "clear confirmation … that [the Company did not] intend to continue renting the Premises in March". On 18 March 2024, FXA stated in paragraph 9 of its e-mail that: (a) even for a month-to-month tenancy at least one month's notice of discontinuance of the tenancy should be given; and (b) "[u]p until now, no official termination notice nor notice that [the Company] intends to cease use of the [Premises] has been provided to [FXA] by [the Company]". On 10 May 2024, and again on 10 June 2024, FXA informed the Liquidators that they had not addressed paragraph 9 of FXA's 18 March 2024 e-mail.[43] Even on

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41 Liquidators' Affidavit at [23]; LWS at [59].

42 FXA's Affidavit at p 53; FXA's Written Submissions dated 15 January 2024 at [82].

43 FXA's Affidavit at pp 134, 143, 146–147, 151.

20 September 2024, FXA put on record to the Liquidators that despite earlier requests for confirmation on whether they wished to terminate the Sub-Lease, they refused to do so resulting in the continuance of the Sub-Lease until FXA ceased to continue renting the Premises.[44]

28 The Liquidators rely on an e-mail from FXA dated 29 January 2024 wherein FXA's representative stated that she had been informed "that all [the Company's] staff and personnel vacated the [P]remises earlier this month, so [the Company] no longer occupies the [P]remises and has not paid any rent since December 2023".[45] But unilateral abandonment of the Premises by the Company did not on the facts amount to a surrender or notice to quit. The Liquidators do not dispute that the Company's furniture, fittings and other items remained at the Premises even after its personnel had vacated the Premises.[46] The Company or Liquidators also never expressly confirmed that the Company no longer intended to continue renting the Premises despite FXA pressing the Liquidators repeatedly for an answer (see [27] above).

29 That said, any unilateral abandonment of the Premises by the Company would amount to a repudiatory breach of the Sub-Lease, and which breach would continue for as long as the Company persisted in its abandonment of the Premises. In *Klerk-Elias Liza v K T Chan Clinic Pte Ltd* [1993] 1 SLR(R) 609, the Court of Appeal (at [63]–[65] and [74]–[76]) assumed the concept of repudiation and acceptance (and the rule relating to mitigation of loss) applied to a tenancy matter. This has been accepted in subsequent cases (see *Tan Soo*

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44 FXA's Affidavit at pp 129–131 (FXA's answers to the Liquidators' e-mail dated 6 September 2024 at [3] and [5]).

45 Liquidators' Affidavit at [20]; LWS at [56(2)]; FXA's Affidavit at p 155.

46 22/1/25 Minute Sheet.

Leng David v Lim Thian Chai Charles and another [1998] 1 SLR(R) 880 at [27]–[28]; *Lim Kau Tee and another v Lee Kay Li* [2005] SGHC 162 at [45]–[47]; *Hsu Hsueh Hui (alias Jenny Hsu) v Foong Yook Kooi and others* [2022] SGHC 108 at [102]; and *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 ("*RBC Properties*") at [134]). Indeed, the courts have recognised that a lease agreement creates contractual rights and obligations between the lessor and lessee (*Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [62]; *RBC Properties* at [134]).

30 On the basis that the Company was in continuing repudiatory breach of the Sub-Lease, I find that FXA had accepted the Company's repudiatory breach when FXA re-entered the Premises and started sourcing for a replacement tenant, thereby terminating the Sub-Lease. In their e-mail dated 22 February 2024, the Liquidators explained that FXA had informed them (at in-person meetings on 6 and 7 February 2024) that FXA had already started arranging for the viewing of the Premises by potential tenants. This was confirmed by FXA's reply on 23 February 2024 where FXA also stated that it was "imperative" for it to secure a tenant to take over the tenancy as soon as possible. On 18 March 2024, FXA reiterated that it "intended to have the [Premises] leased out soonest possible to a new tenant" and informed the Liquidators that a number of viewings from interested parties had already taken place.[47] FXA had also informed the Liquidators that they were only allowed to visit the Premises in FXA's presence.[48] Such conduct was inconsistent with the Company's right to exclusive possession of the Premises as tenant under the

47 FXA's Affidavit at pp 145–146, 149, 150 and 152.

48 FXA's Affidavit at pp 142, 145, 151 and 154.

Sub-Lease, and pointed to FXA evincing an intention to accept the Company's repudiatory breach and to terminate the Sub-Lease.

31 In the above regard, I am cognisant that FXA had repeatedly reminded and pressed the Liquidators about unpaid rent from January 2024 (when the Liquidators first informed FXA that they had been appointed the Company's Liquidators) until May 2024. For instance, on 15 May 2024, FXA again informed the Liquidators of the losses it had allegedly suffered including six months of unpaid rent (up to that period).[49] FXA had also repeatedly invited the Liquidators to confirm whether the Company intended to continue renting the Premises (see [27] above). That said, FXA cannot blow hot and cold. It cannot treat the Company as continuing to lease the Premises (by demanding for rent) and at the same time denying the Company the right to exclusive possession of the Premises, such as by refusing the Company entry to the Premises without its presence, arranging for viewing by potential tenants to take over the Premises, and subsequently allowing a replacement tenant to take over the Premises in mid-May 2024.[50] It bears remembering that the burden is on FXA to prove the debt. This includes proving both the initial existence of the Sub-Lease as well as its subsistence for the entire period of FXA's claim.

32 In the round, I thus find that FXA had accepted the Company's continuing repudiatory breach of the Sub-Lease at the latest on 7 February 2024 (see [30] above). I have also found the Sub-Lease to be a monthly tenancy (see [21] above). FXA accepts that one month's notice may be given by the Company to terminate the Sub-Lease and that it would be entitled to claim the

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49 FXA's Affidavit at pp 139, 141–143, 146–147, 149, 151, 153–155.

50 FXA's Affidavit at pp 138 and 142.

monthly rent, service charge and Admin Fee up to the end of the notice period.[51] The Liquidators accept this position also (see [25] above). Hence, FXA would be entitled to claim as its loss the monthly rent and service charge (including the goods and services tax) that it had to pay the Landlord, as well as the Admin Fee, pursuant to the Gentlemen's Agreement, until 7 March 2024.

33 FXA's loss would thus have comprised the following:

(a) The sum of $34,109.14 for December 2023. This is the same amount that the Company had paid FXA in November 2023, based on FXA's corresponding invoice in that month.[52]

(b) The sum of $34,411.08 each for January and February 2024 (totalling $68,822.16). The increase in the amount for January and February 2024 was due to the increase in the goods and services tax (from 8% in 2023 to 9% in 2024) as exhibited in the Landlord's invoices to FXA.[53]

(c) The sum of $7,770.24 (being the sum of $34,411.08 pro-rated for seven days in March 2024).

Electricity charges

34 Next, FXA's POD also included a claim for electricity charges on the Premises from January to April 2024.[54] FXA has not explained why it is entitled to claim reimbursement on the electricity bill from the Company. There is no

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51 22/1/25 Minute Sheet.

52 FXA's Affidavit at pp 173 and 197.

53 FXA's Affidavit at pp 106, 107, 109 and 110.

54 FXA's Affidavit at pp 103, 108, 111, 114, 117 and 124.

evidence that the Gentlemen's Agreement or Sub-Lease (being oral in nature) included an obligation for the Company to be responsible for the electricity charges pertaining to the Premises. Crucially, FXA provided no evidence indicating that the Company paid the electricity charges for the period from December 2022 to November 2023, although the Company did pay FXA the monthly rent, service charge and Admin Fee during that period. FXA has thus failed to prove, on a balance of probabilities, that this debt was owing from the Company to it.

Agency Fee

35 Finally, FXA included in its POD a claim for $49,582.19, being the Agency Fee paid to the property agent to secure a new tenant for the Premises.[55] I am satisfied that this would have been recoverable as damages by FXA as the Agency Fee was an expense reasonably incurred by FXA in taking reasonable steps to mitigate its loss (*The "Asia Star"* [2010] 2 SLR 1154 ("*The "Asia Star"*") at [24]). FXA has exhibited an invoice from the property agent for a sum of $49,582.19 as the Agency Fee. There is no evidence that the quantum of the Agency Fee is unreasonable. The burden of proving that an aggrieved party has failed to fulfil its duty to mitigate falls on the defaulting party (*The "Asia Star"* at [24]). Mr Tiong also accepts that (assuming the Sub-Lease existed) this claim would in principle be reasonable and he also does not seriously dispute the quantum.[56]

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55 FXA's Affidavit at pp 103 and 122.

56 22/1/25 Minute Sheet.

Conclusion

36 In conclusion, I disagree with the Liquidators' decision to reject the POD wholly and I allow FXA's application. I thus direct the Liquidators to accept the POD partially and in these amounts:

(a) a total of $110,701.54 being the monthly rent, service charge and Admin Fee for the months from December 2023 to 7 March 2024 (see [33] above); and

(b) the sum of $49,582.19 being the Agency Fee (see [35] above).

37 I will hear the parties on costs.

Audrey Lim J
Judge of the High Court

Pradeep Pillai, Joycelyn Lin Shuling and Rashpal Singh Sidhu
(PRP Law LLC) for the applicant;
Edward Tiong Yung Shu, Tan Yen Jee and Kheshin Cheong Rui Pin
(Allen & Gledhill LLP) for the respondents.