

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

BETWEEN :

- 1. ENG CHUAN & COMPANY (a firm)
- 2. ENG CHUAN & COMPANY PONTIAN (sued as a firm)
- 10 3. ENG CHUAN SINGAPORE LIMITED
- 4. ENG CHUAN CHAN (sued as a firm) Appellants
(Defendants)

- and -

FOUR SEAS COMMUNICATIONS BANK LIMITED Respondents
(Plaintiffs)

CASE FOR THE APPELLANTS

RECORD

20 1. This is an appeal from a judgment dated 4th July 1980 of the Court of Appeal of the Republic of Singapore (KULASEKARAM, CHUA and A.P. RAJAH, JJ.), allowing an appeal from a judgment dated 31st January 1980 of the High Court of the Republic of Singapore (D'COTTA, J.) and ordering the Appellants to give to the Respondents possession of certain premises known as Nos.61, 61A and 61B CHULIA STREET, Singapore ("the Premises") on or before 30th September 1980. pp.49-52
pp.39-43
p.52,
11.11-15

30 2. The sole issue in this appeal is whether the First Appellants, Eng Chuan & Company ("the Firm"), were the tenants of the premises on 6th April 1977 (when the Respondents commenced proceedings for possession of the premises) and thus enjoy the protection of the Control of Rent Act (Chapter 266) ("the Act"). p.2, 1.20

3. In 1946, the then landlord of the Premises granted a tenancy thereof to "Eng Chuan & Co" the sole proprietor of which was at that time one LEE SIEW PAN ("the Founder"). p.29,
11.22-26

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- pp.63-64
p.18, 11.37-41
p.66
4. On 1st January 1951, the Founder took into partnership 5 persons (namely) TEO PUAY WEE, LEE PUAN BENG, LEE CHAY TIAN, LEE CHAY KIA and LEE CHAY SONG, thus constituting the Firm, which thereafter carried on business at the Premises.
- p.42, 11.13-15
5. On 31st December 1953, the Founder, the said TEO PUAY WEE and the said LEE PUAN BENG retired from the Firm, which has at all subsequent times consisted of the 3 remaining partners, namely the said LEE CHAY TIAN the said LEE CHAY KIA and the said LEE CHAY SONG ("the Successors") who have throughout remained in occupation of the Premises 10
- p.42, 11.16-20
6. In about 1964, the Respondents purchased the Premises, subject to and with the benefit of the tenancy granted in the name of the Firm.
- p.16, 11.12-21
7. Between 1964 and February 1975, the Respondents accepted the monthly rent in respect of the Premises from the Firm, which throughout that period consisted of the Successors and no other person, and issued receipts therefor in the name of the Firm. 20
- p.42, 11.33-42
8. During the said period, the Respondents treated the Firm as the tenant of the Premises, and took no steps to ascertain the membership of the Firm, as to which the Respondents were indifferent.
- p.17, 11.28-33
p.18,11. 1-4
9. At some time between 1970 and 1975, the Respondents formed the intention of rebuilding the Premises, and therefore wished to recover possession thereof. 30
- p.16,11.20-24
10. Pursuant to such desire, the Respondents refused as from February 1975 to accept any further rent from the Firm and by a letter dated 29th January 1976 ("the Notice"), written by their Solicitors, Messrs. MALLAL & NAMAZIE, they gave notice to the Firm to quit and deliver up possession of the Premises on 29th February 1976.
- p.58
11. The Appellants replied to the Notice through their then Solicitors, Messrs. OOI, TAN & JOHNS, by letter dated 4th March 1976, claiming the protection of the Act. 40
- p.59
12. On 6th April 1977, the Respondents issued a Summons with Statement of Claim attached in the District and Magistrates' Courts, Singapore, claiming possession of the Premises against the Firm and its licensees on the Premises, together with ancillary relief, on the ground that all the Defendants were unlawfully in occupation thereof. 50
- pp. 1-3
13. The Statement of Claim was amended on 23rd
- pp. 4-5

- February 1979, and further amended on 2nd April 1979. A Defence on behalf of the Firm, and the other 3 Appellants herein, namely Eng Chuan & Company Pontian, Eng Chuan Singapore Limited and Eng Chuan Chan, was delivered on 10th June 1977. pp. 6-7
14. The Defence denied that the tenancy had been determined by the Notice and invoked the protection of the Act. p.6, 11.22-29
- 10 15. The case was heard in open court by the learned District Judge (Mr. Soon Kim Kwee) on 22nd February 1979, 24th March and 31st March 1979 and 11th May 1979. pp. 15-24
p.25, p.31 &
p.32
16. Written submissions by the Respondents and the Appellants, as ordered on 31st March 1979, were made on 23rd April and 21st April 1979 respectively. pp. 7-10
pp. 11-14
- 20 17. On 11th May 1979, the learned District Judge ordered possession of the Premises to be delivered on or before 15th September 1979. p.31,11.21-27
18. The Grounds of Decision, dated 27th July 1979, proceeded on the footing that the tenancy granted in 1946 had remained vested in the Founder until terminated by the Notice, and that therefore the Appellants had at no time been more than licensees of the Founder. pp.28-30
p.29,11.31-39
- 30 19. In particular, the learned District Judge rejected, as having no merit, the Appellants' contention that the Respondents had accepted the Appellants as tenants of the Premises. p.30, 11.8-11
20. The Appellants gave Notice of Appeal on 22nd May 1979 and in their Petition of Appeal to the High Court of the Republic of Singapore dated 18th August 1979, relied inter alia on the ground that :- pp.33-34
pp.35-37
- 40 "The Learned trial Judge erred in fact and/or in law in rejecting the defence of the Appellants with regard to the creation of a tenancy by estoppel in favour of the Appellants". p.36, 11.40-44
21. The appeal was argued before D'COTTA, J. on 11th January 1980. pp.37-38
22. The learned Judge delivered judgment on 31st January 1980, allowing the appeal with costs. pp.39-43
23. D'COTTA, J. found as a fact that the Respondents purchased the Premises in 1964 subject to the tenancy of the Firm, which then p.42, 11.16-20

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consisted of the Successors.

- p.42, ll.
22-30 24. He further found that the Respondents accepted that the Firm was their tenant, to whom they looked for payment of the rent. The cheques for rent tendered by the Firm were received by the Respondents as rents tendered by the Firm.
- p.42, ll.
31-46 25. The learned Judge went on to hold that initially the Respondents were quite prepared to accept the Firm as their tenant, irrespective of its composition, and that they continued to do so until 1975. 10
- pp.45-46 26. The Respondents appealed from D'COTTA, J.'s judgment to the Court of Appeal of the Republic of Singapore by Notice of Appeal dated 6th February 1980.
- p.48, ll.
10-35 27. The main grounds of the Respondents' appeal were that D'COTTA, J. had erred in fact and in law in failing to note that the Appellants had not pleaded estoppel in their Defence and had made no submission based on estoppel to the learned District Judge. 20
- p.54, ll.2-3
pp.49-52
p.52, ll.
13-15 28. The Court of Appeal of the Republic of Singapore (JULASEKARAM, CHUA and A.P. RAJAH, JJ.) heard the Respondents' appeal on 15th May 1980 and delivered its judgment on 4th July 1980, allowing the Respondents' appeal and ordering the Appellants to give possession of the Premises to the Respondents on or before 30th September 1980. 30
29. The Court of Appeal delivered a single judgment, which after reciting the salient facts and the course of events in the Courts below, continued as follows :-
- p.51, ll.
48-51
p.52, ll.1-10 "There is no evidence that the Respondents had entered into a new agreement creating a new tenancy in favour of the Successors. This being so, the only other way by which these three persons could have become the tenants of the Respondents would have been by way of a tenancy by estoppel. The Appellants had not pleaded estoppel at the trial and as this defence was not available to them the learned appeal Judge misdirected himself when he dealt with the appeal as if such a plea had been expressly pleaded by the Appellants. 40
- We therefore cannot agree with the learned appeal Judge that the Respondents had accepted the Firm (meaning the three partners of Eng Chuan & Co. in 1964) as their tenants". 50

30. On 13th October 1980, the Court of Appeal of the Republic of Singapore made an order granting the Appellants liberty to appeal to the Judicial Committee of the Privy Council from the whole of the judgment dated 4th July 1980 aforesaid.

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p.55

p.55,11.
31-34

31. The Appellants respectfully submit that the true legal analysis of the facts proved before the learned District Judge is

10 EITHER that by reason of (i) the Founder
relinquishing possession of the Premises
(ii) the Successors assuming possession
thereof and (iii) the Respondents (or
their predecessors in title) impliedly
consenting to such relinquishment and
assumption respectively, there was a
surrender by operation of law of the
Founder's tenancy and the grant of a
20 new tenancy to the Successors in the
name of the Firm

OR that by reason of the said matters
numbered (i) (ii) and (iii) respectively,
there was an assignment by estoppel of
the Founder's tenancy to the Successors,
which became binding on the Respondents.

30 OR that by reason of the unquestioning
acceptance of rent in respect of the
Premises by the Respondents from the
Firm, consisting of the Successors,
between 1964 and 1975, the Respondents
were estopped from denying that the
Successors were their tenants.

32. The Appellants further respectfully
contend that given the terms of the Act, no
failure by the Appellants to plead, or argue,
any of the said estoppels before the learned
District Judge can debar them from relying
upon the same.

40 33. Section 2 of the Act, so far as material,
provides as follows :-

"2. In this Act except where the context
otherwise requires -

50 'premises' means any dwellinghouse,
flat, factory, warehouse, office,
counting house, shop, school and any
other building whether of permanent
or temporary construction in which
persons are employed or work and any
part of any such buildings let or
sublet separately and includes any
land whereon any such building is or

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has been erected with the consent of the landlord but does not include any new building built or completed after 7th September 1947

.....

'tenancy' means any lease, demise, letting or holding of premises whether in writing or otherwise, by virtue whereof the relationship of landlord and tenant is created, but does not include the letting or hiring of furnished rooms with board;

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'tenant' means the tenant of premises in respect of which a tenancy exists and includes a statutory tenant and in the case of a sub-tenancy a sub-tenant to whom the premises or part thereof is sublet".

34. Section 14 of the Act provides that :-

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Act [viz. Part III_7]."

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35. Section 27 of the Act provides that :-

"The following persons are statutory tenants under this Act, namely :-

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Act be deprived of such possession by his landlord; and

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(b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Act".

36. As emerges from the definitions of "premises" and "tenancy" in Section 2 of the Act, Section 14 thereof applied to the present case and accordingly, the Courts below had, it is respectfully submitted, no jurisdiction to make an order for possession of the Premises except in one of the cases set out in Part III of the Act. None of the said cases was alleged to be, or was, in point.

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37. The Appellants will respectfully contend that no possible failure by them to plead or argue any one or more of the estoppels mentioned

in paragraph 31 hereof could effectively enlarge the limited jurisdiction conferred on the Courts by Section 14 of the Act to make an order for the recovery of possession of the Premises.

10 38. Accordingly, the Appellants respectfully submit that the judgment of the Court of Appeal of the Republic of Singapore dated 4th July 1980 was wrong and ought to be reversed, and this appeal ought to be allowed with costs, for the following (amongst other)

R E A S O N S

- 20
1. BECAUSE the Courts below, on the facts of the case, had no jurisdiction to make an order for the recovery of possession of the Premises, given the express terms of Section 14 of the Act.
 2. BECAUSE the facts proved in evidence were inconsistent with the Founder being still the tenant of the Premises at the time of the service of the Notice.
 3. BECAUSE the Successors had become the tenants of the Premises by the time the Notice was served, and were therefore entitled to the protection of the Act.
 4. BECAUSE the Respondents did not establish any of the grounds on which an order for possession may be made under the Act.

ALAN SEBESTYEN

No.53 of 1980

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CASE FOR THE APPELLANTS

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