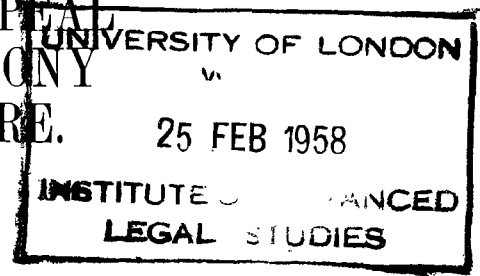


27, 1957

In the Privy Council.

No. 17 of 1956.

ON APPEAL FROM THE COURT OF APPEAL
OF THE SUPREME COURT OF THE COLONY
OF SINGAPORE. ISLAND OF SINGAPORE.



BETWEEN

LIM SIEW NEO (Defendant) APPELLANT

AND

PANG KEAH SWEE (Plaintiff) RESPONDENT.

49854

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment of the Court of Appeal p. 135
of the Colony of Singapore, dated the 1st July, 1956, dismissing an Appeal
by the Appellant and Ang Heng Kip and Lim Siew Teck from a Judgment
of Mr. Justice Whitton, dated the 23rd February, 1955, in favour of the pp. 103-4
Respondent on the Respondent's claim (inter alia) for an injunction
restraining the Appellant from causing a nuisance to the Respondent at
265 Orchard Road, Singapore.

2.—The action was commenced by a Writ of Summons, dated the
14th June, 1952, and was brought by the Respondent against the Appellant p. 1
10 as First Defendant and against Ang Heng Kip (the Appellant's mother)
as Second Defendant and Lim Siew Teck (the Appellant's brother) as
Third Defendant.

3.—By the Amended Statement of Claim which was delivered on the p. 28
15th March, 1954, the Respondent claimed damages and an injunction
against each of the Defendants on the grounds of trespass and nuisance.

4.—The Respondent's allegations of trespass and nuisance are not,
however, material for the purposes of this Appeal, and the only question
to be determined on this Appeal is whether the Respondent is in occupation
of the ground floor of 265 Orchard Road, Singapore, as a statutory tenant
20 (as the Respondent contends) or as a trespasser (as the Appellant contends).

RECORD
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p. 95, l. 31

5.—In his judgment the learned trial Judge dealt with the background to the case as follows :—

“ The following facts, which are not in dispute, constitute
“ the background to the case. The Second Defendant, who is
“ now an old lady of 75, was the owner of the premises 265 Orchard
“ Road. The First and Third Defendants, who are respectively
“ her daughter and son, are both in their early fifties. At all
“ material times the First Defendant (the Appellant) conducted
“ all business transactions relating to the premises, which have
“ belonged to the family since before the Second World War, 10
“ on behalf of her mother or latterly on her own behalf, as in
“ April, 1951, the ownership was transferred to her. In 1945
“ shortly after the liberation the First Defendant, Miss Lim
“ (the Appellant) agreed to allow a certain Madam Tay to go into
“ occupation of the building which at that time was empty.
“ In May, 1947, the Plaintiff (the Respondent) occupied the
“ ground floor for business purposes with the acquiescence of
“ Madam Tay, and started a chemist’s business. About the same
“ time a man called Teo Sin Han went into occupation of the
“ first floor, also with the acquiescence of Madam Tay. Madam 20
“ Tay herself was at that period occupying the top floor. She
“ vacated the premises on 31st March, 1951. Mr. Teo vacated
“ at the end of the same year. The Plaintiff has continued to
“ carry on his business there until the present time.”

6.—At the trial it was contended on behalf of the Respondent :—

- (A) That the Respondent went into occupation of the ground floor of 265 Orchard Road in May, 1947, as a sub-tenant from Madam Tay.
- (B) That there was no term against sub-letting in the tenancy agreement under which Madam Tay held the premises. 30
- (C) That even if the original sub-letting was unlawful the Appellant knew of the Respondent’s sub-tenancy before Madam Tay determined her lease by Notice to Quit dated the 23rd February, 1951, and that the breach of the term against sub-letting was thereby waived.
- (D) That from the termination of Madam Tay’s tenancy on the 31st March, 1951, the Respondent had been in occupation of the ground floor of 265 Orchard Road as a statutory tenant by reason of the provisions of Section 16 of the Control of Rent Ordinance, 1947, as explained by the Privy Council 40 in *Guan Seng Kee Ltd. v. Buan Lee Seng Ltd.* (1954) A.C. 53.

P. 143

7.—At the trial it was contended on behalf of the Appellant :—

- (A) That the Respondent went into occupation of the ground

floor of 265 Orchard Road as a licensee and not as a tenant from Madam Tay. RECORD
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- (B) That there was an express term against sub-letting in the tenancy agreement under which Madam Tay held the premises.
- (C) That the Appellant did not know, even if it was the fact, that the Respondent occupied the ground floor as a sub-tenant rather than as a licensee and that there had been no waiver.
- (D) That the Respondent was not a statutory tenant because the provisions of Section 16 of the Control of Rent Ordinance 1947, only applied to a case where the original sub-tenancy had been lawful.

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8.—The learned trial Judge, after hearing the evidence and arguments of Counsel, came to the following conclusions :—

- (A) That the Respondent was the sub-tenant and not the licensee of Madam Tay. In the course of his judgment the learned Judge said : “ Now it is not questioned that the Plaintiff from 1947 to 1951 paid Madam Tay rent at the rate of \$220 per month inclusive of light and water. He enjoyed, as far as Madam Tay was concerned, exclusive possession of the ground floor. It seems moreover hardly likely he would have embarked on the organisation and outfit requisite for a chemist’s business unless he felt satisfied he would enjoy some security of tenure. All these facts, regard also being had to the point we are dealing with transactions which took place in Singapore, establish, I think, that a sub-tenancy was created between the Plaintiff and Madam Tay. On the other hand in the circumstances of this case I do not consider the fact Madam Tay lived in the same premises is strong enough to upset that conclusion.” p. 97, l. 28
- (B) That there was a prohibition against sub-letting in the oral contract between the Second Defendant and Madam Tay. In dealing with the credibility of the witnesses the learned Judge said in his judgment, “ I was not so favourably impressed by Miss Lim’s (the Appellant’s) demeanor in the witness-box that I am prepared to accept her unsupported word on any of the material points in issue.” p. 98, l. 33
p. 98, l. 43
p. 98, l. 18
p. 90, l. 27
- On this part of the case, however, the learned Judge found that the Appellant’s evidence was supported by the evidence of her solicitor Mr. Boswell, as to the instructions which she gave him in 1947, and over-ruled the submission on behalf of the Respondent that such evidence was inadmissible.

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- p. 99, l. 48 (c) That the Appellant knew of the Respondent's sub-tenancy at least a year before Madam Tay's tenancy came to an end in March, 1951, and that the breach of the term against sub-letting was accordingly waived.
- p. 100
p. 100, l. 45 (d) That the Respondent had been a statutory tenant of the ground floor of 265 Orchard Road since March, 1951, and that the effect of the waiver was to place the Respondent's sub-tenancy on the same footing as if there had been no prohibition against sub-letting. The learned Judge therefore held on the authority of *Guan Seng Kee Ltd. v. Buan Lee Seng Ltd.* (1954) A.C. 53, that the Respondent was a statutory tenant of the Appellant by reason of the provisions of Section 16 of the Control of Rent Ordinance, 1947. 10

pp. 129-
134 9.—The Defendants (including the Appellant) appealed to the Court of Appeal for the Colony of Singapore. The Appeal was heard by Taylor, Storr and Knight JJ., on the 20th June, 1955, and on the 1st July, 1955, the Court of Appeal delivered reserved judgments unanimously dismissing the Appeal with costs.

10.—At the hearing of the said Appeal the contentions on behalf of the Appellant and on behalf of the Respondent were substantially the same as those submitted at the trial. Counsel on behalf of the Appellant, however, also submitted that the Respondent was not entitled to contend before the Court of Appeal that there was no prohibition against sub-letting in the tenancy agreement under which Madam Tay held the premises, because the Respondent had not served a notice of cross-appeal. 20

p. 130
p. 134
pp. 132-3
p. 129
p. 131, l. 45
p. 129 11.—The leading judgment in the Court of Appeal was delivered by Taylor, J., with whose judgment Storr, J. concurred. In the course of his judgment, Taylor, J. upheld the finding of the learned trial Judge that the Respondent occupied the ground floor as a sub-tenant and not as a licensee, and on this part of the case Knight, J. agreed with the other members of the Court. Taylor, J. further held that the evidence of Mr. Boswell was inadmissible, and that if this evidence were disregarded there was, in view of Whitton, J.'s finding as to the Appellant's credibility, no acceptable evidence that Madam Tay was prohibited from sub-letting. Taylor, J. accordingly held that the Respondent was a statutory tenant. Knight, J. did not make any reference in his judgment to the alleged prohibition against sub-letting but he too held that the Respondent was protected by reason of the provisions of the Control of Rent Ordinance, 1947. No member of the Court of Appeal made any finding on the issue of waiver. 30 40

12.—The Appellant was granted leave to appeal to Her Majesty in Council on the 3rd April, 1956.

13.—The Respondent submits that this Appeal should be dismissed for the following among other

REASONS

- (1) BECAUSE the Respondent was granted a sub-tenancy of the ground floor of 265 Orchard Road, Singapore, by Madam Tay.
- (2) BECAUSE there was no prohibition against sub-letting in the tenancy agreement under which Madam Tay held 265 Orchard Road.
- 10 (3) BECAUSE even if there was such a prohibition the Appellant waived any breach thereof.
- (4) BECAUSE the Respondent occupied the said floor as a lawful sub-tenant and on the termination of Madam Tay's lease on the 31st March, 1951, such lawful sub-tenancy became a statutory tenancy by reason of the provisions of Section 16 of the Control of Rent Ordinance, 1947.
- 20 (5) BECAUSE even if the Respondent's sub-tenancy of the said floor before the 31st March, 1951, was not lawful he became a statutory tenant thereof on the termination of Madam Tay's lease by reason of the provisions of Section 16 of the Control of Rent Ordinance, 1947.
- (6) BECAUSE the judgments of the Court of Appeal and (save as to his finding of a prohibition against sub-letting) of the learned trial Judge were right.

~~COLIN DUNCAN.~~

MICHAEL O'CONNELL STRANDERS

In the Privy Council.

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(*Plaintiff*) RESPONDENT.

CASE FOR THE RESPONDENT

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