8/1982

IN THE PRIVY COUNCIL No. 53 of 1980

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)
3. ENG CHUAN SINGAPORE LIMITED
4. ENG CHUAN CHAN (sued as a firm) Appellants

- and -

FOUR SEAS COMMUNICATIONS BANK LIMITED Respondent

CASE FOR THE RESPONDENT

	Record
1. This is an appeal from judgment of the Court of Appeal of the Republic of Singapore (Kulasekaram, Chua and A.P. Rajah JJ.) dated 4th July 1980 allowing with costs the Respondent's appeal from a judgment of D'Cotta, J. in the High Court of the Republic of Singapore dated 31st January 1980 and restoring a judgment of Soon Kim Kwee D.J. in the District Court of Singapore dated 27th July 1979.	p.49, l.1 - p.52, l.15 p.39, l.1 - p.43, l.21 p.28, l.1 - p.30, l.28
2. The question for decision is whether the Respondent is entitled to recover possession of the premises known as 61, 61A and 61B Chulia Street, Singapore (hereinafter called "the premises").	
3. In 1946 or 1947, the Respondent's predecessor-in-title granted an oral monthly tenancy of the premises to Eng Chuan & Company. At the date of the grant Eng Chuan & Company was not a partnership but was the name or style under which a business was carried on by Mr. Lee Siew Pan (hereinafter called "Mr. Lee"). On 1st January 1951, Mr. Lee entered into a partnership which was formed between Mr. Lee and five other persons who together traded in the name or style formerly used by Mr. Lee. On 31st December 1953 Mr. Lee and two of the other partners retired from that partner-	p.49, l.36 - p.50, l.1 p.15, ll.29-31 pp.61-62 pp.63-64 pp.65-66

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ship. The three remaining partners continued to trade under the name or style of Eng Chuan & Company. On 11th January
p.69, ll.20-21 1971, the name of Eng Chuan & Company was struck off the Business Names Register.

p.16, ll.12-15 4. The Respondent purchased the premises in 1964 subject to the monthly tenancy granted in the name of Eng Chuan &
p.16, ll.18-20 Company in 1946 or 1947. Rent was paid to the Respondent in the name of Eng Chuan & Company and receipts were issued in that name. The last rent payment made on 19th
p.16, ll.22-24 February 1975 was in respect of rent for October 1974. A
p.58 Notice to Quit dated 29th January 1976 addressed to the lessee Eng Chuan & Company was served at the premises and required the tenant to deliver up possession of the premises on the 29th February 1976 (or at the expiration of the month of the tenancy which would expire next after the end of one calendar month from the time of the service of the Notice to Quit).

5. This action was brought by the Respondent as Plaintiff against the four Appellants as Defendants to recover possession of the premises. The Statement of Claim which was
p.2, l.22 - p.3, l.38 dated 6th April 1977 was Amended on 23rd February 1979 and
pp.4-5 Further Amended on 2nd April 1979. The Appellants' Defence
p.6, l.1 - p.7, l.11 was dated 10th June 1977. The claim against the 1st Appellants was a claim against those who presently claim to be
p.7, ll. 35-37 partners of the firm of Eng Chuan & Company.

6. The summons came before Soon Kim Kwee, D.J. on 22nd February 1979 when oral evidence was heard. Pur-
p.26 suant to the learned District Judge's order dated 31st March
pp.11-14 1979, written submissions were made on behalf of the Appel-
p.7, l.12 - p.10 lants and the Respondent respectively on 21st April 1979 and 23rd April 1979.

p.8, ll.1-2 7. The Respondent claimed possession on the ground that the Appellants were trespassers in unlawful occupation of the premises. The Respondent submitted to the learned District Judge that :

p.8, ll.7-10 (1) the tenancy granted in the name of Eng Chuan & Company was a grant to the person carrying on business in that name at the date of the grant;

p.8, ll.15-18 (2) the tenancy granted in 1946 or 1947 to Eng Chuan & Company therefore vested in Mr. Lee by operation of law;

(3) the tenancy remained vested in Mr. Lee there
p.8, ll.23-26 having been no assignment of the same from him to the persons who presently claim to be partners trading under the name or style of Eng Chuan & Co.;

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(4) the Notice to Quit dated 29th January 1976 operated to determine the tenancy vested in Mr. Lee; — p.58, p.8, ll.27-29

(5) the tenancy having been duly determined and Mr. Lee having previously relinquished possession, all those who remain in occupation, namely, the Appellants, are trespassers; — p.8, ll.43-44

(6) the Appellants have not alleged any assignment or sub-tenancy or estoppel in their Defence which would entitle them to remain in occupation and render their occupation of the premises lawful. — p.8, l.47 - p.9, l.2

8. Soon Kim Kwee, D.J., found for the Respondent and set out the grounds of decision in writing on 27th July 1979. He accepted the Respondent's submission that the grant made to Eng Chuan & Company was valid only as a grant of an estate to the person carrying on business in that name at the date of the grant. He accordingly held that the tenancy granted to Eng Chuan & Company vested in Mr. Lee and continued to be so vested notwithstanding the subsequent creation of a partnership, with the result that, at best, the partners in the firm of Eng Chuan & Company (i.e. the 1st Appellants) and the other Defendants occupied the premises as licensees of Mr. Lee. He accepted the Respondent's further submission that the notice to quit was validly served and had the effect of terminating the tenancy vested in Mr. Lee. — pp.28-30; p.29, ll.31-39; p.58, p.30, ll.1-7

9. The learned District Judge rejected the Appellants' contentions :

(1) that as the Appellants had openly occupied the premises, the Respondent had accepted the Appellants as tenants; and — p.30, ll.7-10

(2) that the 1st Appellants were entitled to the protection of the Control of Rent Act (Cap. 266) by virtue of their occupation of the premises for the last 38 years. He ordered the Appellants to deliver possession of the premises to the Respondent with mesne profits at $275.00 per month as from 1st November 1974 and costs. A stay of execution was granted pending the appeal of the Appellants. — p.30, ll.12-14; p.27, ll.20-25; p.30, ll.26-28

10. D'Cotta, J. reversed the judgment of Soon Kim Kwee, D.J. He found from the facts that the Respondent purchased the premises in 1964 "subject to the tenancy of the Company whose firm at the relevant time comprised a partnership of three persons, namely Lee Chay Tian, Lee Chay Kiat and Lee Chay Soon". He also found that as far as the Respondent was concerned its tenant was the Company to whom it looked for payment of rents and that the cheques for the rents tendered by the Company were received by the — p.42, ll.16-20; p.42, ll.26-30

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Respondent as rents tendered by the Company. In giving his reasons for allowing the appeal, D'Cotta, J. said :

p.42, ll.39-47

> "The attitude of the Bank has been such that they did not care or did not even trouble to know who the actual tenant was so long as someone paid the rent. It appears to one that it only dawned on the Bank to seek legal advice in 1975 when they wanted to rebuild, whereas if they had been diligent, they would have made the necessary enquiries when they purchased the premises in 1964. This cannot be held against the Company ... In my judgment I find that the Bank accepted the Company as their tenants. In conclusion I find it difficult to accept the submission of Counsel for the Bank when he described the Company as trespassers. In the circumstances I allow the appeal with costs."

p.43, ll.15-21

6 H.L.C. 672
1973 1 M.L.J.39
p.42, l.48 - p.43, l.14

The learned Judge also relied on Croft v. Lumley and South Union Co. Ltd. v. Seng Hin Ltd. as authority for the proposition that where money is paid, it is to be applied according to the expressed will of the payer and not of the receiver.

11. The Court of Appeal of Singapore unanimously allowed the Respondent's appeal against the judgment of D'Cotta, J.

12. In giving reasons for allowing the Respondent's appeal, the Court of Appeal of Singapore, stated that it did not agree with the learned Judge that the law cast any duty or obligation on the Respondent to make enquiries as to a change in the composition of the firm of Eng Chuan & Company and further said as follows :

p.51, ll.38-40

p.51, l.47 - p.52, l.10

> "There is no evidence that the Bank entered into a new agreement creating a new tenancy in favour of Lee Chay Tian, Lee Chay Kiat and Lee Chay Soon. This being so, the only other way by which these three persons could have become the tenants of the Bank 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 Judge misdirected himself when he dealt with the appeal as if such a plea had been expressly pleaded by the [Appellants].
>
> We therefore cannot agree with the learned appeal Judge that the Bank had accepted the Company (meaning the three partners of Eng Chuan & Co. in 1964) as their tenants."

13. The Respondent respectfully submits that there are other or additional grounds why the Court of Appeal of

Singapore should have allowed the appeal, namely :

(1) The Respondent acquired the premises subject to a tenancy in the name of Eng Chuan & Company. There was no evidence that the subsisting tenancy was other than the tenancy granted in 1946 or 1947 and which (by operation of law) was vested in Mr. Lee. The acquisition by the Respondent could not have operated so as to destroy Mr. Lee's subsisting estate nor as a fresh grant in favour of the partners of the firm at the date of the acquisition.

(2) The acceptance of rent paid by and in the name of Eng Chuan & Company did not create a grant by the landlord to the members from time to time of a partnership trading under the same name or style.

(3) A grant cannot be made to members from time to time of an unincorporated association.

(4) Insofar as the learned High Court Judge based his decision on Croft v. Lumley and South Union Co. Ltd. v. Seng Hin Ltd. the learned Judge erred in fact and in law there being no evidence that the Respondent accepted rent with knowledge of the changes in the composition of the business carried on under the name or style of Eng Chuan & Company. Alternatively the said cases are distinguishable on the facts.

6 H.L.C. 672
(1973) 1 M.L.J. 39

14. The Appellants have argued below that the letting by the previous landlord to Eng Chuan & Company constituted the creation of a landlord and tenant relationship between the landlord on the one hand and the partners on the other and further, that Mr. Lee's creation of a partnership and subsequent changes in that partnership did not concern the landlord. In so far as the Appellants rely on this argument the Respondent will submit in the words of Farwell L.J. in Sadler v. Whiteman that :

p.13, ll.14-18
p.13, ll.9-12

/1910/ 1 K.B. 868 at 889

> "In English law the firm as such has no existence, ... the firm name is a mere expression, not a legal entity ... "

For as James L.J. put it in Ex parte Blain, in re Sawers :

> "we have not yet introduced into our Law the notion that a firm is a legal person."

(1879) 12 Ch. D.522 at 533

The Appellants admit that in these matters the law of Singapore is identical with the law of England.

p.12, ll.32-33

15. Further, if the Appellants' said contention were right, it would, in effect, seek to confer corporate status on an

unincorporated association which has no legal entity.

16. The Respondent submits that this appeal should be dismissed with costs for the following, amongst other

R E A S O N S

1. BECAUSE there was no evidence to show that the tenancy subject to which the premises were acquired by the Respondent in 1964 was other than the tenancy which, as the learned District Judge and the Court of Appeal have rightly held, was vested in Mr. Lee by operation of law.

2. BECAUSE there was no evidence to show that the said tenancy had devolved upon the persons claiming to be the present partners of Eng Chuan & Company either by way of assignment or novation.

3. BECAUSE there was no evidence to support any finding that the Respondent is estopped from denying that the 1st Appellants are their tenants.

4. BECAUSE, in any event, the defence of estoppel is not available to the Appellants.

5. BECAUSE as the Court of Appeal and the learned trial judge have rightly held, the Appellants are trespassers in unlawful occupation of the premises.

6. BECAUSE the judgment of both the Court of Appeal and of the District Judge were right and the judgment of the learned High Court Judge was wrong.

ROBERT JOHNSON Q.C.

DOREEN LE PICHON

No. 53 of 1980

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B E T W E E N :

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(a firm) and OTHERS
Appellants

- and -

FOUR SEAS COMMUNICATIONS
BANK LIMITED Respondent

CASE FOR THE RESPONDENT

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