

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

RAJA'S COMMERCIAL COLLEGE
(sued as a firm)

Appellants
(Defendants)

- and -

GIAN SINGH & COMPANY LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill,
London EC3V 9DU.

Solicitors for the Appellants.

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD.

Solicitors for the Respondents.

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

RAJA'S COMMERCIAL COLLEGE
(sued as a firm)

Appellants
(Defendants)

- and -

GIAN SINGH & COMPANY LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

No. 1

In the High
Court of
Singapore

WRIT OF SUMMONS

Suit No. 110 of 1968

No. 1

IN THE HIGH COURT IN SINGAPORE

Writ of Summons
17th January
1968

BETWEEN:

GIAN SINGH & COMPANY LIMITED Plaintiffs

And

RAJA'S COMMERCIAL COLLEGE
(sued as a firm) Defendants

10 THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF
JUSTICE OF THE REPUBLIC OF SINGAPORE IN THE NAME
AND ON BEHALF OF THE PRESIDENT OF THE REPUBLIC
OF SINGAPORE

To Raja's Commercial College (sued as a firm) of
No. 30-1 Raffles Place, (second floor), Singapore.

WE COMMAND YOU that within eight days after
the service of this Writ on you, inclusive of the
day of such service, you do cause an appearance
to be entered for you in a Cause at the Suit of

In the High Court of Singapore

Gian Singh & Company Limited, a Company incorporated in Singapore and having its registered office at No. 30-1 Raffles Place, Singapore.

No. 1

Writ of Summons
17th January
1968
(continued)

And take notice that in default of your so doing, the Plaintiffs may proceed therein to Judgment and execution.

Witness, Mr. Eu Cheow Chye, Registrar of the High Court in Singapore, the 17th day of January 1968.

Sd. Tay Chin Chye

10

Deputy Registrar

Solicitors for the Plaintiffs

N.B. This Writ is to be served within Twelve months from the date thereof, or if renewed, within six months from the date of such renewal including the day of such date and not afterwards.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Singapore.

20

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$5.50 with an addressed envelope to the Registrar of the High Court at Singapore

O. 46 r.4 - Take Notice that this Writ is served on you as a partner and/or the person having the control or management of the Defendant firm.

30

The Plaintiffs Claim is for possession of all that part comprising an area of 2,917 square feet of the second floor of the Plaintiffs' building at 30-1 Raffles Place, Singapore, formerly occupied by the Defendants as the Plaintiffs' contractual tenants.



3.

No. 2

STATEMENT OF CLAIM

In the High
Court of
Singapore

No. 2

Statement of
Claim
17th January
1968

1. The Plaintiffs are the owners of a building known as Gian Singh Building and situate at 30-1 Raffles Place, Singapore.

2. The Defendants were formerly the Plaintiffs' contractual tenants of a portion of the second floor of the said premises, the portion in question comprising an area of 2917 square feet.

10 3. By a Notice to Quit dated the 30th day of November, 1967, the Defendants' said tenancy was determined, the said Notice expiring on the 31st day of December, 1967.

4. The Defendants have failed, neglected or refused to comply with the said Notice to Quit and continue in occupation of the area referred to in paragraph 2 hereof.

20 5. The Plaintiffs are not precluded from recovering possession of the area formerly let to the Defendants by any of the provisions of the Control of Rent Ordinance.

And the Plaintiffs claim :-

- (i) possession of the area formerly let to the Defendants;
 - (ii) double rent from the 1st January 1968 to the date of delivery of possession;
 - (iii) damages;
 - (iv) costs;
 - (v) such further or other relief as to this
- 30 Honourable Court may seem fit.

Delivered the 17th day of January, 1968.

Sd.

Solicitors for the Plaintiffs.

In the High
Court of
Singapore

4.

No. 3

DEFENCE

No. 3

Defence
24th February
1968

1. Save as hereinafter admitted, the Defendants deny each and every allegations of the Statement of Claim as if the same were set out herein seriatim and specifically traversed.

2. Paragraph 1 of the Statement of Claim is admitted.

3. The Defendants deny paragraph 2 of the Statement of Claim and in answer say that they were and are still the tenants of the Plaintiffs in respect of a portion of the second floor of the said premises comprising an approximate area of 2917 square feet.

10

4. The Defendants deny paragraph 3 of the Statement of Claim save that they received a Notice to Quit dated the 30th day of November, 1967 purported to determine the Defendants' said tenancy on the 31st day of December, 1967. The Defendants in answer say that the Notice to Quit was void and thereby the said tenancy was not determined.

20

5. The Defendants deny paragraph 5 of the Statement of Claim and maintain that the said premises are governed by the provisions of the Control of Rent Ordinance

6. The Defendants pray that the Plaintiffs' claim be dismissed with costs.

Dated and Delivered this 24th day of
February, 1968.

30

Sd:

Solicitors for the Defendants

To:- The abovenamed Plaintiffs, and
to their Solicitors, Messrs.
Drew & Napier, Singapore.

5.

No. 4

COURT NOTES OF EVIDENCE

In the High
Court of
Singapore

Coram, Choor Singh J.

No. 4

Thursday 15th November 1973

Court Notes of
Evidence
15th November
1973

Grimberg

M.P.D. Nair

Agreed bundle is read and admitted and
marked A.B.

Plaintiff's
Counsel's
opening speech
Exhibit AB

Defence in para. 4 of S/D is abandoned.

Intld. C.S.

10

Grimberg:

Only one issue in this case.

Is the premises caught by the Control of Rent
Ord.

We say "No". I rely on Eastern Realty Co.Ltd.
v. Chan Hua Seng, (1967) 2 M.L.J.195

We say the whole building is "new" and not rent
controlled.

I also rely on Bank Negara Indonesia v. Philip
Hoalim, (1973) 2 M.L.J. 3.

20

We claim possession and damages.

Mesne profits are damages.

See Reshty's case, (1965) 1 M.L.J. 77

Measure of damages is rent at which the pltf's.
would have been able to let the premises for had
the dfds. complied with the notice to quit.

Intld. C.S.

P.W.1 Balwant Singh, affd.

Plaintiff's
evidence

I live at 82 Meyer Rd. S'pore.

Balwant Singh

30

Managing Director of the pltf. Co.

Examination

The building known as 30-1 Raffles Place is

In the High
Court of
Singapore

—
No. 4

Court Notes of
Evidence
15th November
1973

Plaintiff's
evidence
Balwant Singh
Examination
(continued)

Exhibits
P.1 P.2

Exhibit
A.B.1

Exhibit
A.B.2

owned by me and leased to the defd. Co.

Pages 1 and 2 of the Agreed Bundle show what the building looked like in 1950 and what it looks like now.

The building was purchased by me and my three brothers, Hardial Singh, Inder Singh and Heera Singh in 1947. Vendor was R.M. Meyer.

On 14.5.51 as a result of an arbitration award the building became the property of Heera Singh and myself. We requested Ng Keng Siang to strengthen the building, to increase the size of the building and to increase the floor area by adding two more floors. Mr. Ng Keng Siang prepared plans which were signed by me and submitted to the Municipality. Ng Keng Siang has since died. I have endeavoured to secure plans from his widow but without success. I have instructed my solicitors to enquire from the Planning Dept. if plans existed. I produce my solicitor's letter and the reply received (P.1 and P.2). As a result of the alterations, the third and fourth floors have been added to this building. There was a mezzanine floor added between the ground floor and the first covering the rear portion of the ground floor.

Prior to 1953 when these alterations and additions were carried out, the floors of the building were all wooden floors. These floors were replaced by concrete floors covered with mosaic tiles.

Prior to 1953 there were no lifts in the building. We installed two lifts which serve all floors.

A.B.1 shows the facade of the building prior to 1953. A.B.1 was taken in 1950. There were four arches on the ground floor facing the road. Of these four arches, the one on the right hand side as you face the building remains intact. The other arches have been demolished.

The front line of the building has been extended forward - towards Raffles Place.

I have engaged the services of D.K. Gudgeon, a consultant engineer to give technical evidence in this case.

I see A.B.2. The right hand side portion of

10

20

30

40

10 the old building remains. It has a ground floor, a first floor and a second floor. This part of the building served as a connection between my building and the building on the right of my building which was formerly occupied by Robinson & Co. Ltd. What is remaining of my old building was used as a passage to the first and second floors of Robinson's building and the first and second floors of my building. Formerly we could gain access from the first floor of Robinson's building to the first floor of my building. This access has now been closed.

20 Prior to 1953, the ground floor of my building was divided up. A Swiss watch maker named Rene Ullman occupied the front portion which was divided from the rear portion by a cement wall. In 1953 this wall was broken down. In fact two walls were broken and the ground floor was made into one long room extending from Raffles Place to the rear.

30 The second floor is occupied to the extent of 2,917 sq.ft. by the defd. firm. That constitutes the major part of the second floor. A floor did exist at this level in the old building. There are at present two gents lavatories and two ladies lavatories on this floor. These amenities did not exist in the old building. Access from first floor to second floor was by wooden stairs - roughly 10 to 12 feet wide. These stairs have been removed and replaced by concrete stairs with mosaic but of much lesser width. This floor is now served by one lift. There is another lift which goes up to the first floor but it is capable of going up the fourth floor. It is reserved for tenants of the ground floor. The second floor is now a concrete floor covered with Dunlop Sementex tiles. Before it was a wooden floor. The ceiling to the second floor is of concrete. The old ceiling was also of concrete.

40

In the old building there were only three floors - ground floor, first floor and second floor.

The whole of the facade has been changed and is now completed of marble and granite.

The two additional floors were added at the same time in 1953 but since then the facade of the roof

In the High Court of Singapore

—
No. 4

Court Notes of Evidence
15th November 1973

Plaintiff's Evidence

Balwant Singh

Examination
(continued)

In the High
Court of
Singapore

has been added by the tenant of the fourth floor
in 1970.

—
No. 4

Court Notes of
Evidence
15th November
1973

In 1957 or 1958 when the defds. first went
in as tenant the building was structurally the
same as now. Prior to the notice to quit
appearing at A.B. 3 the defds. were paying rent
at the rate of \$2,281.50 per mensem inclusive
of all services including P.U.B. charges. That
works out at 75 cents per sq. ft. Since expiry
of the notice to quit they have continued to pay
this rent which I have accepted without
prejudice to the notice to quit.

10

Plaintiff's
evidence

Balwant Singh

Examination
(continued)

Had the defds. given up possession when
the notice to quit expired I would have been
able to let their portion at a higher rent.
The notice to quit expired on 31.12.67. From
1.2.67 I had been receiving rent from Oriental
Emporium for the first floor at the rate of
\$1.43 per sq.ft. with the tenants paying their
own services and P.U.B. charges.

20

From the 1.5.70 the fourth floor of the
building has been let to the Bank of America
at the rate of \$1.80 per sq. ft. They have
also been paying their own services and P.U.B.
charges.

I now claim damages for trespass on the
basis of the rents received from the Oriental
Emporium and the Bank of America based on the
difference between the rents received by me
from the defds. and the rents received from
these tenants I now produce a computation
of damages claimed for trespass (computation
marked Ex. P.3).

30

Exhibit
P.3.

I now produce copies of leases between the
pltfs. and the Oriental Emporium and between
the pltfs. and the Bank of America (marked
P.4 and P.5).

Exhibits
P.4 & P.5

I have tried to find bills and receipts
for the value of the work done in 1953. I
have not been successful. The name of the
contractor who did the work was Yin Yan
Contractors. He was an old man at that time.
Do not know if his firm exists. To the best
of my recollection the alterations and
additions carried out in 1953 cost about
half a million dollars.

40

Cross-
examination
Exhibit
A.B.1

Xxd. by M.P.D. Nair

Q. Look at A.B.1?

- A. Yes
- Q. Can you mark the first floor and second floor?
- A. Yes. (witness marks on A.B.1).
- Q. In 1953 you added two floors?
- A. Yes. But the fourth floor was not covered.
- Q. The two lifts were added in 1953?
- A. Yes.
- Q. In 1970 what repairs did the Bank of America do?
- 10 A. They changed the facade and did interior alterations on the fourth floor.
- Q. Did you sign any plans in 1970?
- A. Yes.
- Q. Was planning approval granted?
- A. The Bank of America must have obtained it.
- Q. What was the area of the whole building in 1947?
- A. It was much smaller.

Re-exam.

20 In 1953 we added two floors. The third floor was used. It had a concrete ceiling or roof. There was access to the roof from the third by staircase as well as by the lift. There was no habitable fourth floor then. It was a roof garden with a railing all round.

In 1963 or 1964 the fourth floor roof garden was covered and converted into an office floor.

30 The floor area of the second floor was extended in 1953 towards Raffles Place. That was as the result of the line of the building being extended towards Raffles Place. When we covered the roof garden we were summoned for doing it without approval. Our architects put in proper plans and approval was granted. This was in 1963 or 1964.

By me
Sgd. CHOOR SINGH

In the High
Court of
Singapore

—
No. 4

Court Notes of
Evidence
15th November
1973

Plaintiff's
Evidence

Balwant Singh

Cross-
examination
(continued)

Re-examination

In the High Court of Singapore

P.W.2. Donald Keith Gudgeon s/s.

I live at 1B Belmont Rd. S'pore.

No. 4

Court Notes of Evidence 15th November 1973

Plaintiff's Evidence

Donald Keith Gudgeon

Examination (continued)

Consultant Engineer. I am a chartered engineer, Fellow of the Ins. of Engineers (Aust), Fellow of the Ins. of Structural Engineers and Fellow of the American Society of Civil Engineers, etc.

I have been in practice in S'pore for 15 years. I am the senior partner of my firm. Have given evidence in these courts before.

10

At the request of the pltfs.' Solicitors I have inspected 30-1 Raffles Place. I was supplied with photos A.B.1 and A.B.2.

I was requested, on the basis of the photos and my inspection, to come to a conclusion as to the alterations that have taken place.

Exhibit A.B.1

Considerable alterations have been made to the facade. A.B.1 indicates a 3-storied building with a very old fashioned front and arches. Three arches have been removed. Remnants of the arches are still visible - the situation of the old arches is still visible. If you lift up two boards on the pavement outside the building you can see the old drain underneath the pavement. This drain is still being used. It is covered. It has an inspection cover.

20

The front line of the old building has not been retained. The front line has been moved out into Raffles Place - three to four feet - the full length of the building.

30

The new facade is of granite. The facade has been extended upwards to a greater height. A canopy has been added over the pavement - it is at least five feet wide. By canopy I mean that part which projects outwards from the facade of the building. This did not exist in the old building. The building line itself has been extended three to four feet which means all floors have been extended forward three or four feet into Raffles Place.

40

I inspected the ground floor, mezzanine

floor, first floor, second floor, third floor and fourth floor of the building.

The ground floor consists of one single room stretching from the Raffles Place end to the rear wall of the building.

The mezzanine floor has been constructed since the original construction of the building. It is L shaped at the rear of the premises and is of concrete. To me it looked like resting on the original structure of the building. The two side walls enclose it and support it.

I went up to the second floor in a lift. There were two lift wells.

I also went up to the third floor which is occupied by the Bank of America. The third floor is not part of the original building. The new third floor is supported by columns on either side of the building on the inside of the side walls. These columns have a span of about 45 ft. and they stand at intervals of about 12 ft. The second floor and the third floor are of concrete. The floor of the first floor is also of concrete. The same columns support the first, second and third floors which are of concrete.

I also went up to the fourth floor, This is also a new floor. These alterations could not be described by any stretch of imagination as repairs. There was substantial reconstruction. The side walls were retained and heightened to accommodate the top floor, but new floors of concrete were put in and they are supported by new columns. The floor area of the building was increased by 35 per cent by the addition of the mezzanine floor and the third floor.

I was in S'pore. in 1954. To add the mezzanine floor and the third floor, reconstruct the facade, to construct lift wells and instal two lifts and to convert the wooden floors into concrete floors, it would have cost in my opinion at least \$300,000/- without converting the fourth floor into an habitable area.

XXd.

Q. Have you seen the original plans of the building?

In the High Court of Singapore

—
No. 4

Court Notes of Evidence
15th November 1973

Plaintiff's Evidence

Donald Keith Gudgeon

Examination
(continued)

Cross-examination

In the High
Court of
Singapore

No. 4

Court Notes of
Evidence
15th November
1973

Plaintiff's
Evidence

Donald Keith
Gudgeon

Cross-
examination
(continued)

Exhibit A.B.1

A. I have seen the site plan.

Q. The building plans?

A. No.

Q. Up to what height did the original columns
exist?

A. I can't say.

Q. You have not seen the plans and specifications
of all the work done in 1953?

A. No.

Q. Such work must have planning approval?

10

A. Yes.

Q. How can you say that this is a new building?
You have not seen the old building or its plans?

A. The extremely long clear span of the floor
without any intermediate columns would not be
consistent with the building I see in A.B.1.

Q. Are you saying the old columns would not
support the third and fourth floors?

A. The old building in A.B.1 would not be able
to sustain the concrete floors and a new floor.

20

Q. Are you suggesting there have been structural
alterations?

A. Yes.

Q. How many feet is this building higher than the
old one?

A. The central part of the old building was
higher but it contained no more floors than the
building on the right archway.

By me

Sgd. CHOOR SINGH

30

P.W.3 Lim Thiam Kim, affd.

In the High Court of Singapore

I live at Block 103, 26-5 Henderson Crescent, S.3.

No. 4

Asst. court clerk employed by Drew & Napier.

Court Notes of Evidence 15th November 1973

On instructions of Mr. Grimberg I went to the Registry of Business Names for the purpose of conducting a search as to the existence of Yin Yan Contractors. I filed in this application Form (P.7). There is no record of Yin Yan Contractors having registered.

Plaintiff's Evidence

10

Xxd. by Nair - nil.

Lim Thiam Kim Examination

By me

Sgd. CHOOR SINGH

P.W.4. Phua Eng Miang, affd.

Phua Eng Miang Examination

I live at 12 Recreation Rd. S'pore.

Chief clerk of Robinson & Co.Ltd. Have been employed by them since 1935. I am familiar with the building now known as Gian Singh Building. First and second floors of this building were used by Robinson & Co. Ltd. until 1940 or 1941 when we moved to Raffles Place. First floor was used for ladies wear. Second floor was used as a cafe. A.B.1 shows the building. The building on the right of Gian Singh's building was the main Robinson's store. Access to the first and second floors of Gian Singh Building was through the main Robinson's building.

20

Exhibit A.B.1

In A.B.2 behind the white building on the right was a passage way connecting the two buildings on the first and second floors.

30

Exhibit A.B.2

The ground floor of Gian Singh's building was used by Rene Ullman. Half way was a wall. Rene Ullman occupied the front half. Behind the area occupied by Rene Ullman was a space and behind the space was Robinson's store.

I inspected Gian Singh's building a few days ago. The connecting passages on the first and second floors are closed.

In the High Court of Singapore

No. 4

Court Notes of Evidence 15th November 1973 Plaintiff's Evidence Phua Eng Miang Cross-examination

XXd.

Q. When did Robinson's leave Gian Singh's building?

A. Before the Japanese occupation.

Q. After that you have not entered the building?

A. No. Except a few days ago.

By me

Sgd. CHOOR SINGH

- Adjd. to 16.11.73 at 10.30 a.m. -

Balwant Singh Further Examination 16th November, 1973

Friday 16th Nov. 1973.

10

Hearing resumed in ct.

Parties and counsel as before.

P.W.1 Balwant Singh, on former affirmation.

Examined by Grimberg

As the result of my evidence yesterday I conducted a further search for the records of payment to the contractor. I found a small suit case in a disused room containing cheque butts. Some of the cheques are for payment to Yin Yan contracts. The cheques I have found amount to \$119,150/-. I produce a schedule of those cheques (P.8). The cheque butts were stored in several places. I have not been able to find other cheque butts. One of the cheques is for \$7,000 paid to Mr. Ng Keng Siang in part payment of his fee (cheque butts named P.9).

20

Exhibit P.8

Exhibit P.9

Further Cross-Examination

XXd.

Q. You can't produce any bill showing the work actually done?

A. No. Yin Yan did not do any other work for us.

30

By me

Sgd. CHOOR SINGH

P.W.5 Jack Arthur Philips, s/s.

I live at 25 Bright Hill Crescent, S.20.

Registered surveyor practising in S'pore
Have been a qualified surveyor since 1959.

10 I carried out a survey of the floor area
of the third floor of Gian Singh building. It is
occupied by Bank of America. I produce a
photostat copy of my drawing in my work book (P.10).
The area of the third floor is 7,200 sq.ft.
inclusive of the lift well and staircase. The
area of lift wells and staircase is 510 sq.ft.
The area of the other floors would be approximately
the same.

Xxd. by Nair - nil.

By me

Sgd. CHOOR SINGH

In the High
Court of
Singapore

—
No. 4

Court Notes of
Evidence
16th November
1973

Plaintiff's
Evidence

Jack Arthur
Philips

Examination

P.W.6 Loke Seng Chew, s/s.

I live at 87-F, Jalan Tiga Ratus, S'pore.

20 I am employed in the building control
division of the P.W.D. This department has
taken over the functions of the Chief Building
Surveyor. I have brought to the ct. a card
showing plans which were submitted in respect
of 30-1 Raffles Place in 1953. Three plans
were submitted. First plan was submitted on
17.1.53. It was for reinforced concrete and
details. The next plan is dated 18 5.53. It
was amendment to the plan of the original building.
30 Third plan was submitted on 3.9.53. It was also
for amendment to the plan of the original building.
All three were submitted by Mr. Ng Keng Siang.
The R.C. plan was submitted for record purposes.
The first amendment plan was approved on 16.7.53
and the second on 26.7.54.

When my Dept. was centralised at Maxwell Rd.
all the plans from the various geographical areas
were put in our store. In the process of shifting,
some plans were lost. I have been unable to find
the plans I have mentioned.

Xxd.

40 Q. When did you join Building Control Division?

Cross-
Examination

In the High Court of Singapore

No. 4

Court Notes of Evidence 16th November 1973

Plaintiff's Evidence

Loke Seng Chew

Cross-Examination (continued)

A. I was posted there in 1972.

Q. Have you searched for these plans ?

A. Yes.

Q. Were you asked to find plans submitted in 1970?

A. No.

Card marked P.11 seen returned.

By me

Sgd. CHOOR SINGH

- Case for the pltfs. -

10

Defendant's Evidence

G. Natarajan

Examination

D.W.1 G. Natarajan, affd.

I live at No. 2 Lucky Rise, S'pore.

I am the defd. in this action. I am sole prop. of Raja's Commercial College.

I became tenant of the pltfs. in Feb. 1957. I rented 2,917 sq.ft. on the second floor of Gian Singh building at \$2,281.50 per mensem inclusive of all services including water and electricity. The second floor was an empty hall. It had a concrete floor. A lift serves the second floor. I made partitions and converted them into class-rooms. No additions or alterations were done to the second floor after I entered.

20

Prior to my occupying the second floor I had occasion to go to the Gian Singh building. I visited the first, second and third floors, It was after 1950. I visited in 1950. On the first floor I saw cosmetics, watches and cameras being sold by Gian Singh & Co. It was on the ground floor. I saw these items. On the first floor was their furnishing dept. - materials for furnishing and hardware dept.

30

On the second floor was their carpet dept. On the third floor was their film dept.

When I occupied the second floor area, it was in the same condition as I saw it in 1950. The condition of the floor was the same.

On the ground floor now there is a big hall used by the Oriental Emporium. In 1950 it was also a big hall.

10 The first floor hall is now occupied by Oriental Emporium.

Third floor is now occupied by Bank of America. It is a big hall. It is the same hall I saw in 1950.

Fourth floor is now occupied by Bank of America.

On the ground floor behind the main building is an open space and next to it is an old store.

XXd. by Grimberg

20 Q. When you first went in you occupied about 970 sq.ft.?

A. Yes.

Q. Subsequently you increased your area to 1,404 sq.ft.?

A. Yes.

Q. And still later it became 2,917 sq.ft.?

A. Yes.

Q. You went up to third floor in 1950?

A. Yes.

Q. I put it to you that this is sheer fantasy?

30 A. No.

Q. How did you go up?

A. In a lift.

In the High Court of Singapore

—
No. 4

Court Notes of Evidence
16th November 1973

Defendant's Evidence

G. Natarajan

Examination
(continued)

Cross-
Examination

In the High
Court of
Singapore

No. 4

Court Notes of
Evidence
16th November
1973

Defendant's
Evidence

G. Natarajan
Cross-
Examination
(continued)

Q. Was there a mezzanine floor in 1950?

A. Yes.

Q. You say there was a film dept. on third floor?

A. Yes.

Q. Anything else on third floor?

A. No

Q. Area of third floor was the same as now?

A. Yes.

Q. Over 7,000 sq. ft.?

10

A. Yes.

Q. You say that 7,000 sq. ft. was used to sell cinema films?

A. I don't know.

Q. The film dept. which you visited, if you ever visited, was on the second floor in 1950?

A. No.

Q. This is not the first litigation in which you have engaged with your landlord?

A. No.

20

Q. In 1960 the pltfs. distrained for rent in Distress 44/60?

A. Yes..

Q. In those proceedings you claimed that you had paid rent and had not been supplied with receipts?

A. Yes.

Q. The action went to trial and you were represented by Mr. N.A. Christopher?

A. Yes.

30

Q. The trial lasted two days and your evidence was rejected and you lost?

A. Yes.

Q. In 1967 in Suit 12/67 further proceedings were brought against you on the grounds that you had partitioned an additional area on the second floor and was not paying rent for it?

A. Yes.

Q. Again you denied the pltfs.' allegations?

10 A. Yes.

Q. You were represented by Mr. Lee Kim Yew?

A. Yes.

Q. And again your evidence was rejected by the trial judge Mr. Justice Winslow?

A. Yes.

Q. On both those occasions you were found to be an untruthful witness?

A. No.

20 Q. I put it to you that what you had said about the third floor in 1950 is also untruthful?

A. No.

Q. And also about the existence of the mezzanine floor in 1950 is another untruth?

A. No.

Q. Are you calling any witnesses to say that the third floor and the mezzanine floor existed in 1950?

A. No.

Q. You have had six years to find such witnesses?

A. I did not look for them.

30 Q. The fact of the matter is you received this notice to quit at the end of 1967 and chose to ignore it?

In the High Court of Singapore

—
No. 4

Court Notes of Evidence
16th November 1973

Defendant's Evidence

G. Natarajan
Cross-Examination
(continued)

In the High Court of Singapore

No. 4

Court Notes of Evidence 16th November 1973

Defendant's Evidence

G. Natarajan Cross-Examination (continued)

A. I have acted in accordance with the advice of my solicitors.

Q. And you have had three solicitors?

A. For this action only Rodrigo & Tock and then they gave the case to Mr. Nair.

Q. I suggest to you that you have been untruthful today as you have been on previous occasions?

A. No.

Q. When you received this notice to quit you said to yourself, I am all right today, let tomorrow look after itself? Did you tell your Solicitor that there was a film dept. on the third floor?

10

A. No. I told him there was a third floor.

Q. When did you mention to your counsel about the film dept.?

A. Never.

Q. So he heard about it the first time when you mention it now?

A. May be.

20

By me

Sgd. CHOOR SINGH

- Case for the defds. -

Defendants' Counsel's Closing speech

Nair:

No fundamental change to the bldg. Cannot be said to be a new bldg. It is controlled by the Control of Rent Ord.

Would anybody offer more than 75 cts. per sq. ft. in 1967? That is the fact.

Basis on which the pltf's. rely is wrong.

30

C.S.

Grimberg:

Defd. has called no evidence in rebuttal with regard to any of the evidence called by the pltf.

Structural alterations and additions made to this building are much more than those done to the building in the Bank Negara case. I submit it is a new building. It has no resemblance whatever to the old building shown in A.B.l. It is therefore not subject to the provisions of the Control of Rent Ord.

Re. damages - no rebuttal evidence has been called. Defd. could have called a valuer. He has not done so. Court has no alternative but to accept our evidence. I ask for judgment for the pltfs.

Court: I find for the pltfs.

The defd. is ordered to give vacant possession of the area occupied by him on the second floor of the building forthwith to the pltfs.

There will also be judgment for the pltfs. against the defd. in the sum of \$187,242.23 and costs as taxed.

Sgd. CHOOR SINGH

Nair says he has instructions to appeal. Asks for stay of execution pending appeal. Grimberg says he is agreeable to a stay being granted till 31.12.73 provided the amount of \$187,242.23 is paid to the pltfs. within seven days.

Nair says his client cannot do that. He requires three months to pay \$187,242.23.

Order: Vacant possession to be given on or before 30th Nov. 1973.
No stay of execution on the judgment for \$187,242.23
No stay on the order for vacant possession after 30.11.73.

Sgd. CHOOR SINGH

In the High
Court of
Singapore

—
No. 4

Court Notes of
Evidence
16th November
1973

Plaintiff's
Counsel's
Reply

10

20

30

22.

No. 5

In the High Court of Singapore

FORMAL JUDGMENT

No. 5

Formal Judgment

16th November 1973

This action having been tried before the Honourable Mr. Justice Choor Singh on the 15th day of November, 1973, and this day and the Judge having ordered that Judgment as hereinafter provided be entered for the Plaintiffs and directed that execution be stayed as hereinafter provided be entered for the Plaintiffs and directed that execution be stayed as hereinafter provided IT IS ADJUDGED that the Defendants do give the Plaintiffs possession of the premises described in the Statement of Claim as a portion, comprising an area of 2,917 square feet, of the second floor of Gian Singh Building, No. 30-1 Raffles Place, Singapore AND IT IS ADJUDGED that the Defendants do pay the Plaintiffs damages in the sum of \$187,242.23 and its costs of this action to be taxed AND IT IS ORDERED that execution on the Judgment for possession be stayed until after the 30th day of November, 1973 and there be no stay on the judgment for the sum awarded.

10

20

Entered in Volume CXXIV page 227 at 2.40 p.m. of the 22nd day of November, 1973.

sgd. Khoo OOn Soo

ASSISTANT REGISTRAR

No. 6

Grounds for Judgment

25th June 1974

No. 6

GROUNDS FOR JUDGMENT

The plaintiffs' claim in this action was for possession of an area of 2,917 sq.ft. occupied by the defendants on the second floor of the plaintiffs' building at 30-1 Raffles Place, Singapore.

30

The facts are these. The plaintiffs are the owners of the building known as Gian Singh Building and situate at 30-1 Raffles Place, Singapore. The defendants were the plaintiffs' tenants of a portion of the second floor of the said premises, the portion in question comprising an area of 2,917 sq.ft. By a Notice to Quit dated the 30th November 1967, the

defendants' said tenancy was determined, the said Notice expired on the 31st December 1967. The defendants refused to comply with the said Notice to Quit and remained in occupation of the said area. The plaintiffs claimed that they were not precluded from recovering possession of the said area by any of the provisions of the Control of Rent Ordinance (Chapter 242). The defendants on the other hand maintained that the said premises were governed by the Control of Rent Ordinance and that they were entitled to its protection.

In the High
Court of
Singapore

—
No. 6

Grounds for
Judgment

25th June
1974
(continued)

There was only one issue in this case namely whether or not the premises in question came within the purview of the Control of Rent Ordinance.

The managing director of the plaintiffs, Balwant Singh, gave evidence for the plaintiffs. His evidence was as follows. The building in question was purchased by the plaintiffs in 1947 and in 1953 substantial alterations were made to the building. Two new floors namely the third and fourth floors and a new mezzanine floor between the first and the second floor, were added. The fourth floor was used as a roof garden. Later it was made habitable and used as an office. Prior to these alterations the building consisted of a ground floor, first floor and a second floor. The first and second floors of the building were wooden floors. These floors were replaced by concrete floors covered with mosaic tiles. Two new lifts were installed to serve all floors. Previously the building was not served by lifts. The facade of the building was completely changed. The front line of the building was extended towards Raffles Place. Two gents' lavatories and two ladies' lavatories were built on the second floor. These amenities did not exist in the old building. Prior to these alterations in 1953 access to the first and second floors was by wooden stairs about 10 to 12 feet wide. These stairs were removed and replaced by concrete stairs, with mosaic, of much lesser width. In the old building there were only three floors: ground floor, first floor and second floor. Two additional floors and a mezzanine floor were added in 1953 and the building now has six floors i.e. ground floor, first floor, mezzanine floor, second floor, third floor and fourth floor. When the Defendants became tenants in 1957 the building was structurally the same as it is now. The

In the High
Court of
Singapore

—
No. 6

Grounds for
Judgment

25th June
1974

(continued)

defendants occupied an area of 2,917 sq.ft. on the second floor at a monthly rental of \$2,281.50.

The plaintiffs called one Donald Keith Gudgeon, a chartered civil engineer, who gave expert evidence on behalf of the plaintiffs. He stated that at the request of the plaintiffs he had inspected 30-1 Raffles Place. He had also been supplied with photographs A.B.1 and A.B.2. On the basis of the photographs and on his inspection of the building he came to the conclusion that considerable structural alterations had been made to the original building. He stated that A.B.1 indicated a three storied building with a very old front and arches. Three of the arches had been removed and the remnants of those arches were still visible. The front line of the building had been moved out three or four feet into Raffles Place. The new facade is of concrete and has been extended upwards to a greater height. A canopy has been added over the pavement which is at least five feet wide. This did not exist in the old building. The building line itself has been extended three or four feet which means that the walls have been extended three to four feet into Raffles Place. He found that a mezzanine floor had been constructed since the original construction of the building. The third and fourth floors were not part of the original building. The new third floor is supported by columns on either side of the building on the inside of the old walls. These columns have a span of about 45 feet and stand at intervals of 12 feet. All the floors are of concrete. The same columns support the first, second, third and fourth floors which are all of concrete. A new concrete super-structure carries the weight of all the floors. In his opinion these alterations could not be described by any stretch of the imagination as repairs. It was substantial reconstruction. The side walls were retained and heightened to accommodate the new third and fourth floors. New floors of concrete were put in which are supported by new concrete columns. The total floor area has been increased by approximately 35 per cent. He stated that he was in Singapore in 1954. In his opinion, to add the mezzanine floor, the third and fourth floors, reconstruct the facade, construct lift wells, instal two lifts and to convert the wooden floors into concrete floors, it would have cost at least \$300,000/-.

10

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50

G. Natarajan who claimed to be the sole proprietor of Raja's Commercial College gave evidence for the defendant Company. He stated that he became tenant of the plaintiffs in 1957. He rented an area of 2,917 sq. ft. on the second floor of Gian Singh Building at \$2,281.50 per mensem inclusive of all services including electricity and water. When he went into occupation the second floor was an empty hall. It had a concrete floor. A lift served the second floor. He made alterations and converted the hall into classrooms.

In the High
Court of
Singapore

—
No. 6

Grounds for
Judgment
25th June
1974
(continued)

Natarajan disputed the fact that the third and fourth floors had been added in 1953. He maintained that they were part of the original building. He also disputed that the mezzanine floor was added in 1953. He claimed that in 1950 he had occasion to go into this building. He visited the second and third floors in 1950 and on the third floor he saw the Film Department of Gian Singh & Company Limited.

Under cross-examination Natarajan admitted that this was not the first litigation which he had with the plaintiffs. He admitted that in 1960 the plaintiffs distrained for rent and in those proceedings he claimed that he had paid the rents but had not been supplied with receipts. He admitted that the action went to trial and that his evidence was rejected by the trial Judge and he lost. He admitted that in 1967 in Suit No. 12 of 1967 proceedings were brought against him by the plaintiffs on the ground that he had partitioned and occupied an additional area on the second floor and was not paying rent for it. He admitted that he had denied the plaintiffs' allegations; that the matter went to trial and that his evidence was again rejected by the trial Judge and he lost the case.

No other witness was called by the defendant Company to testify that the third and fourth floors and the mezzanine floor were part of the original building or that they existed prior to 1953. Nor did the defendants call any expert witness to give evidence in rebuttal of the evidence given by Gudgeon. I accepted the evidence of Balwant Singh. He impressed me as a truthful witness. Furthermore his evidence was substantially corroborated by Gudgeon, an experienced civil engineer whose evidence I had no reason to disbelieve. I rejected Natarajan's evidence because in my opinion he was

In the High
Court of
Singapore

—
No. 6

Grounds for
Judgment
25th June
1974
(continued)

not speaking the truth when he said that he had visited the third floor in 1950. I found it as a fact that the alterations and additions described by Balwant Singh were carried out by the plaintiffs in 1953.

In my opinion the structural alterations and additions made to this building in 1953 were much more than those done in the Bank Negara case (Bank Negara Indonesia v. Philip Hoalim, (1973) 2 M.L.J. 3). The building, after the alterations, had no resemblance whatsoever to the old building shown in A.B.1. In my opinion the work carried out in 1953 went far beyond repairs. On the evidence before me I held that the extensive structural alterations done to the building in 1953 had in fact converted it into a new building and it was therefore not subject to the provisions of the Control of Rent Ordinance. It followed therefore that the area occupied by the defendants was also not within the provisions of the said Ordinance and they were not entitled to its protection.

10

20

As the premises i.e. the area on the second floor occupied by the defendants was not governed by the Control of Rent Ordinance, the plaintiffs were entitled to possession of the said area upon the termination of the tenancy. The tenancy was determined by Notice to Quit dated the 30th November 1967 calling upon the defendants to deliver up possession on the 31st December 1967. The defendants by remaining in possession of the premises after the termination of their tenancy became trespassers and were liable to pay mesne profits.

30

The question of mesne profits was dealt with by me in Syed Ahmad Al-Junied and Ors. v. Reshty, (1965) 1 M.L.J. 77. I stated in that case, at page 80 :-

"... In my opinion, mesne profits are damages for the tort of trespass and have nothing to do with land laws or with rights and interests in immovable property. A landlord may recover in a claim for mesne profits the damages which he has suffered through being out of possession of the land. Mesne profits being damages for trespass can only be claimed from the date when the defendant ceased to hold the premises as a tenant and became a trespasser.

40

The landlord is not limited to a claim for the profits which the defendant has received from the land, or those which he himself has lost; he may recover all the loss which has resulted from the dispossession. See 23 Halsbury's Laws of England, third edition, page 561...."

In the High
Court of
Singapore

—
No. 6

Grounds for
Judgment
25th June
1974
(continued)

10 What I said in that case regarding mesne profits is still good law and was in fact approved by the Judicial Committee when that case went before the Privy Council. Mesne profits are damages and the measure of damages in this case is rent at which the plaintiffs would have been able to let the premises had the defendants complied with the notice to quit.

20 The defendants were in occupation of an area of 2,917 sq.ft. at a monthly rental of \$2,281.50 inclusive of all services including P.U.B. charges. That works out at about 75 cents per square foot. Balwant Singh stated that had the defendants, upon the termination of their tenancy, vacated the area occupied by them he would have been able to let the area at \$1.43 per square foot. He stated that he had been receiving at the relevant period rent from the Oriental Emporium for the first floor at the rate of \$1.43 per square foot with the tenants paying their own service and P.U.B. charges. He stated further that as from the 1st May 1970 the fourth floor of the building had been let to the
30 Bank of America at the rate of \$1.80 per square foot with the tenants paying their own service and P.U.B. charges. He produced a copy of the lease between the plaintiffs and the Oriental Emporium and also of that between the plaintiffs and the Bank of America to substantiate what he had stated. He also produced a computation of the damages claimed for trespass based on the rents paid by the Oriental Emporium and the Bank of America. The computation is as follows :-

40 Recoverable rent for the period
1.1.1968 to 30.4.1970 at \$1.43
per square foot = 28 months ..
Less \$116,796.68
Actual rent paid for period
1.1.1968 to 30.4.1970 at \$0.75
per square foot = 28 months ..
\$ 61,257.00 \$55,539.68

In the High
Court of
Singapore

B/fwd:

S\$55,539.68

No. 6
Grounds for
Judgment
25th June
1974
(continued)

Recoverable rent for
period 1.5.1970 to
30.11.1973 at S\$1.80
per square foot =
43 months .. S\$225,775.80

Less

Actual rent paid for
period 1.5.1970 to
30.11.1973 at S\$0.75
per square foot = 43
months ..

94,075.25 131,702.55
Total: S\$187,242.25

10

This evidence on the measure of damages was not challenged by the defendants. They did not call any rebuttal evidence. They could have called expert evidence, for example, that of a valuer but they did not do so. Under the circumstances I had no alternative but to accept the evidence tendered on behalf of the plaintiffs.

20

The plaintiffs having proved their claim for mesne profits amounting to S\$187,242.25, judgment for this sum was entered against the defendants. The defendants were also ordered to give up vacant possession of the area occupied by them to the plaintiffs on the 30th November 1973 and to pay the plaintiffs' costs of the action as taxed.

Dated this 25th day of June 1974.

sd: CHOOR SINGH J.
J U D G E

30

In the Court
of Appeal

No. 7

NOTICE OF APPEALNo. 7

Notice of
Appeal
22nd November
1973

Take notice that the Appellants being dissatisfied with the decision of the Honourable Mr. Justice Choor Singh given at Singapore on the 16th day of November 1973 appeal to the Court of

Appeal against the whole of the said decision.

Dated the 22nd day of November 1973.

Sgd:

Solicitor for the Appellant

To: The Registrar, and to: M/s. Drew & Napier,
Supreme Court, Singapore.
Singapore. Solicitors for the
Respondents.

In the Court
of Appeal

No. 7

Notice of
Appeal
22nd November
1973
(continued)

10 The address for service of the appellant is
No. 19 Winchester House, Collyer Quay, Singapore.

No. 8

NOTICE OF CHANGE OF SOLICITORS

To the Registrar,

Take notice that Messrs. Donaldson &
Burkinshaw of No. 9 Mercantile Bank Chambers,
Singapore 1, have been appointed to act as the
solicitors for the abovenamed Appellants/
Defendants in this Appeal, in the place of
M.P.D. Nair, Esq.

No. 8
Notice of
Change of
Solicitors
11th December,
1973

20 The address for service of the above
named Messrs. Donaldson & Burkinshaw is No. 9
Mercantile Bank Chambers, Singapore 1.

Dated the 11th day of December, 1973.

Sgd:

Solicitors for the Appellants/
Defendants

To: The abovenamed Respondents/Plaintiffs
and to their Solicitors, Messrs. Drew & Napier,
Chartered Bank Chambers, Singapore, 1.

30 and M.P.D. Nair, Esq., 19 Winchester House,
Collyer Quay, Singapore, 1.

In the Court
of Appeal

No. 9

PETITION OF APPEAL

No. 9

To the Honourable the Judges of the Court of Appeal.

Petition of
Appeal
22nd July
1974

THE PETITION OF THE ABOVENAMED APPELLANTS

SHOWETH as follows :-

1. This Appeal arises from a claim by the Respondents for possession of an area of 2,917 square feet occupied by the Defendants on the second floor of the building known as 30-1 Raffles Place, Singapore, and for mesne profits. 10
2. By a Judgment dated the 16th day of November, 1973 judgment was given in favour of the Respondents, and it was adjudged that the Appellants do give the Respondents possession of the said premises and further that the Appellants do pay the Respondents damages by way of mesne profits in the sum of \$187,242.23 and costs.
3. By an Order of Court made herein by consent on the 30th November, 1973, execution on the Judgment for possession was stayed pending the determination of this Appeal on certain terms and conditions which have been complied with by the Appellants. 20
4. Your Petitioners are dissatisfied with the said Judgment on the following grounds :-
 - (1) The learned Judge erred in fact and in law in finding that the evidence disclosed such substantial structural and/or other alterations that the said building became a new building in fact and accordingly (there being no other grounds upon which the Respondents relied as depriving the Appellants of the protection of the Control of Rent Act, Cap. 266) the learned Judge erred in finding that the Appellants were not entitled to the protection of the said Act. 30
 - (2) The learned Judge erred in fact in finding that the building in question was owned by the Respondents. Such finding was contrary to the only evidence adduced as to such ownership, namely that of Pw1., Balwant Singh, which was that the said building since the 14th May 1951 had been the property of himself 40

and his brother, Heera Singh, and was leased to the Appellants.

In the Court
of Appeal

- (3) The learned Judge erred in fact and in law in awarding damages on the basis of the difference between

No. 9

Petition of
Appeal
22nd July
1974
(continued)

(a) the rent paid by Oriental Emporium for the first floor of the said building at the rate of ₹1.43 per square foot between 1.1.1968 and 30.4.1970 and the rent paid by the Appellants at the rate of 75 cts. per square foot for the same period; and

(b) the rent paid by the Bank of America for the fourth floor of the said building at the rate of ₹1.80 per square foot between 1.5.1970 and 30.11.1973 and the rent paid by the Appellants at the rate of 75 cts. per square foot for the same period

in that the learned Judge failed to differentiate between the peculiar circumstances relating to the tenancies of Oriental Emporium and the Bank of America, viz: (i) Oriental Emporium at the material times occupied the ground floor of the said building as a shop, so that the first floor thereof is a particularly valuable adjunct to such business, and (ii) the Bank of America at the material times occupied the building next door and also occupied the third floor of the said building, to which the Bank had access so that the fourth floor was a particularly valuable adjunct to the Bank of America's Offices. Therefore, the rents paid by Oriental Emporium and the Bank of America were not the true market rents.

- (4) Further, the learned Judge failed to appreciate the true significance of the evidence of PW1, Balwant Singh, who said in examination-in-Chief (Page 5)

"Had the defendants given up possession when the notice to quit expired I would have been able to let their portion at a higher rent. The notice to quit expired on 31.12.1967. From 1.2.1967 I had been receiving rent from Oriental Emporium for the first floor at the rate of ₹1.43 per square foot with the tenants paying their own services and P.U.B. charges.

In the Court
of Appeal

—
No. 9

Petition of
Appeal
22nd July
1974
(continued)

From the 1.5.1970 the fourth floor of the building had been let to the Bank of America at the rate of \$1.80 per square foot. They have also been paying their own services and P.U.B. charges.

I now claim damages for trespass on the basis of the rents received from the Oriental Emporium and the Bank of America based on the difference between the rents received by me from the defendants and the rents received from these tenants. I now produce a computation of damages claimed for trespass (computation marked Ex. P.3)." The learned Judge in relation to this part of the evidence said (page 8) 10

"Balwant Singh stated that had the defendants, upon the termination of their tenancy, vacated the area occupied by them he would have been able to let the area at \$1.43 per square foot. He stated that he had been receiving at the relevant period rent from the Oriental Emporium for the first floor at the rate of \$1.43 per square foot with the tenants paying their own service and P.U.B. charges. He stated further that as from the 1st May 1970 the fourth floor of the building had been let to the Bank of America at the rate of \$1.80 per square foot with the tenants paying their own service and P.U.B. charges. He produced a copy of the Lease between the plaintiffs and the Oriental Emporium and also of that between the plaintiffs and the Bank of America to substantiate what he had stated. He also produced a computation of the damages claimed for trespass based on the rents paid by the Oriental Emporium and the Bank of America. The computation is as follows :- 20 30 40

Recoverable rent for
the period 1.1.1968
to 30.4.1970 at
\$1.43 per square

40

foot = 28 months .. \$116,796.68

In the Court
of Appeal

Less

Actual rent paid
for period 1.1.1968
to 30.4.1970 at
\$0.75 per square
foot = 28 months .. 61,257.00 \$55,539.68

—
No. 9
Petition of
Appeal
22nd July
1974
(continued)

10

Recoverable rent for
period 1.5.1970 to
30.11.1973 at \$1.80
per square foot = 43
months .. 225,775.80

Less

Actual rent paid
for period 1.5.1970
to 30.11.1973 at
\$0.75 per square
foot = 43 months .. 94,075.25 131,702.55
Total : \$187,242.25

20

This evidence on the measure of damages was not challenged by the defendants. They did not call any rebuttal evidence. They could have called expert evidence, for example, that of a valuer but they did not do so. Under the circumstances I had no alternative but to accept the evidence tendered on behalf of the plaintiffs."

30

The learned Judge erred in fact in holding that the evidence of Balwant Singh quoted above meant that the Respondents "would have been able" to let the area occupied by the Appellants at a rental of \$1.43 from the 1st January 1968. There was no or no sufficient evidence on which the learned Judge could have safely awarded damages on the basis proposed by the Respondents. Further, there was no evidence that, on the assumption that the Respondents could have let the said area at \$1.43 per square foot from the 1st January 1968, the Respondents would have been, as at the 1st May, 1970, able to increase the rent to \$1.80 per square foot, payable either by

40

In the Court
of Appeal

—
No. 9

Petition of
Appeal
22nd July
1974
(continued)

the then existing, or new, tenants. The Respondents who called no other evidence on the point failed to prove the rent at which the said area could have been let.

- (5) The learned Judge further erred in law in holding that he had no alternative but to accept what he apprehended the evidence of PW1 as to damages to have been, in the absence of rebuttal evidence by the Appellants, and should instead have scrutinised such evidence and rejected the said basis for claiming damages for the reasons given in paragraph 4 (3) (4) of this Petition. 10
- (6) The Respondents failed to lead evidence as to and the learned Judge failed to apply the principles enunciated by the House of Lords in British Transport Commission v. Gourley (1956) AC 185, as he should have done and reduce the said damages on the ground that the amount of the loss for which the damages represented compensation would have been diminished in the Respondents' case by the incidence of income tax. 20
- (7) The Judgment of the learned Judge was wrong in that possession of that part of the premises occupied by the Appellants should not have been awarded to the Respondents or alternatively that the wrong measure of damages was applied and further or alternatively that from the said damages an appropriate amount by reference to income tax should have been deducted. 30

Your Petitioners pray that such Judgment may be reversed or varied, or that a new trial may be ordered.

Dated this 22nd day of July 1974.

Sgd:

Solicitors for the Appellants

To the Registrar,
High Court, Singapore.

and to Messrs. Drew & Napier

Solicitors for the Respondents. 40

The address for service is c/o Messrs. Donaldson & Burkinshaw, No.9 Mercantile Bank Chambers, Singapore 1.

JUDGMENT OF THE COURT OF APPEAL

Coram: Wee Chong Jin, C.J.
T. Kulasekarem, J.
Tan Ah Tah, J.

No.10

Judgment of the
Court of Appeal
12th November
1974

JUDGMENT

10 The appellants in this appeal were monthly
tenants from the year 1957 of the respondents, the
owners of a building known as Gian Singh Building
situate at 30-1 Raffles Place, Singapore, the
commercial heart of Singapore. Their tenancy
which comprised a portion of the second floor
amounting to an area of 2,917 square feet was
determined by a Notice to Quit expiring on the 31st
December 1967. They refused to comply with the
Notice to Quit and continued to remain in
possession. The respondents commenced proceedings
in January 1968 which the appellants resisted
20 claiming the protection of the Control of Rent
Ordinance. The action did not come to trial, for
reasons which are irrelevant for the purposes of
the present appeal, until November 1973. The
main issue at the trial was whether certain
structural alterations and additions to the building
which the respondents carried out in 1953 had
converted the building into a new building and
thus not subject to the provisions of the Control
of Rent Ordinance.

30 The trial judge found in favour of the
respondents and made an order for possession. The
appellants appealed against the order for
possession but abandoned this ground when the
appeal came up for hearing. In their Statement
of Claim the respondents also claimed double rent
from the 1st January 1968 to the date of delivery
of possession but during the trial the parties
and the trial judge proceeded on the basis that the
claim was for mesne profits, the appellants being
trespassers if the premises were not subject to
40 the provisions of the Control of Rent Ordinance.

The respondents called evidence in support of
the claim for mesne profits. The managing director
of the respondents gave evidence that the monthly
rent paid by the appellants before the determination
of the tenancy was \$2,281.50 or approximately 75
cents per square foot. He said that in 1968 he

In the Court
of Appeal

—
No. 10

Judgment of the
Court of Appeal
12th November
1974
(continued)

had been receiving rent from another tenant. Oriental Emporium, for the first floor of the same premises at the monthly rent of \$1.43 per square foot and produced a copy of the lease to Oriental Emporium. The document produced showed that the lease was for a period of five years from 1st February 1967 at the monthly rent of \$10,000/-, the lessees paying the service and public utilities charges. The respondents' managing director also said he had let the fourth floor of the same premises to the Bank of America from 1st May 1970 at the monthly rent of \$1.80 per square foot, the lessees paying their own service and public utilities charges. He also produced a copy of the lease to the Bank of America which showed that the lease was for five years at the monthly rent of \$12,500/-. He computed that the rent he could obtain for the portion of the second floor occupied by the appellants for the period 1st January 1968 to 30th April 1970, based on the rent paid by the Oriental Emporium for the same period, would be \$116,798.86 calculated at the rate of \$1.43 per square foot. He also computed that the rent he could obtain from 1st May 1970 to 30th November 1973, based on the rent paid by the Bank of America for the same period would be \$225,775.80 calculated at the rate of \$1.80 per square foot. He said that he would have been able to let the portion of the premises occupied by the appellants for the two said periods at \$1.43 and \$1.80 per square foot per month respectively.

10

20

30

The respondents' evidence on this part of their claim was not challenged by the appellants and the trial judge accepted it and acting on the computations and calculations he awarded mesne profits accordingly. The appellants now contend that the trial judge erred in failing to take into consideration the peculiar circumstances relating to the leases to the Oriental Emporium and the Bank of America. The argument is that in the case of the Oriental Emporium they were at the material time already lessees of the ground floor of the same premises so that the first floor as a shop would be a valuable adjunct to the business they carried on on the ground floor. A similar argument is advanced in respect of the rent under the 1970 lease to the Bank of America.

40

We reject this contention. It was not advanced at the trial nor was there any evidence

that the rent paid by the Oriental Emporium or by the Bank of America was because each had obtained a valuable adjunct to its business.

In the Court
of Appeal

—
No.10

Judgment of the
Court of Appeal
12th November
1974
(continued)

10

The next contention of the appellants is that the trial judge accepted the computation prepared by the respondents without scrutinising the contents of the leases to Oriental Emporium and the Bank of America and had he done so he would have come to the conclusion that the respondents' computation was mathematically incorrect. Calculations were produced at the hearing of the appeal which we received and in our opinion, having regard to these calculations, the trial judge did not err in accepting the figures prepared by the respondents. In any event, the trial judge was entitled to act on the respondents' evidence as that was the best evidence available, the appellants neither challenging it nor adducing any contrary evidence.

20

The main contention of the appellants is that the trial judge erred in law in failing to reduce the damages on the ground that the amount of the loss for which the damages represented compensation would have been diminished in the respondents' case by the incidence of income tax. The principle enunciated by the House of Lords in British Transport Commission v. Gourley (1956) A.C. 185 is relied on in support of this contention. In Gourley's case Earl Jowitt, at page 197, said :-

30

" The broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries".

In the same case Lord Goddard (with whose opinion Lord Radcliffe and Lord Somervell of Harrow agreed), at page 206, observed:-

40

"The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened..."

In Hall & Co. Ltd. v. Pearlberg (1956) 1 W.L.R. 244, the official referee applied Gourley's case in assessing damages for trespass to land. The damages

In the Court
of Appeal

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No.10

Judgment of the
Court of Appeal
12th November
1974
(continued)

for trespass included a sum (£650) equal to one year's rent which the plaintiffs would have received but for the defendant's trespass. The official referee is his judgment, at page 248, said:-

"... I see no reason why this sum of £650 should be taxable in the hands of the plaintiffs. Having considered the operation of section 175 of the Income Tax Act 1952, I cannot see how it can be said that the plaintiffs are liable for tax in respect of this award of £650 as damages for trespass. On the other hand, if it had been received as rent it would have been taxable... . In the result the plaintiffs will ... recover £650 tax free instead of £650 less tax and profits tax. I propose to deduct 50 per cent from the damages I award in lieu of rent".

10

Similarly, in Gourley's case the court proceeded on the basis, as agreed by counsel, that the damages recovered by the plaintiff, a civil engineer, for loss of earnings actual and prospective would not be taxable in his hands and on that basis held that in assessing such damages the judge ought to have taken into account the tax the plaintiff would have had to pay if he had in fact earned by his professional activities the sums lost.

20

In the present case, the point now raised was not taken by the appellants in the court below and thus no evidence was led on the respondents' liability to tax and their tax position such as allowable expenditure, accumulated loss and other allowable deductions. In these circumstances, if we are of the opinion that the damages awarded by the court below would not be taxable in the respondents' hands, we would allow the appeal by remitting the matter to the trial court to assess the damages on the basis that account ought to be taken of the income tax the respondents would have had to pay if in fact it had been received as rent. We would not alter the order as to costs and we would order that the respondents have the costs of this appeal.

30

40

However, in our judgment the appellants' main contention must also fail. It is to be observed that in Gourley's case the decision proceeded on the

agreed assumption that the damages awarded would not be taxable in the plaintiffs' hands and in Hall & Co. Ltd. v. Pearlberg the official referee expressly held that the £650 awarded as damages in lieu of rent was not liable to tax under the English Income Tax Act 1952.

In the Court
of Appeal

—
No.10

Judgment of the
Court of Appeal
12th November
1974
(continued)

10 In the present case counsel for the appellants relied on Hall & Co. Ltd. v. Pearlberg as direct authority that damages awarded in lieu of rent would not be liable to income tax. In our opinion this reliance is unsound simply because our income tax law is different from the English income tax laws. However, the question remains whether or not the amount awarded to the respondents as mesne profits would be liable to income tax.

20 It is not disputed that the trial judge applied the correct principle in arriving at the amount he awarded viz. the rent at which the respondents would have been able to let the premises had the appellants complied with the Notice to Quit. Liability to income tax is imposed by Section 10 of the Income Tax Act (Ch.141). The material provisions of Section 10 read :-

30 "10-(1) Income Tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of -

(f) rents, royalties, premiums and any other profits arising from property;"

In our opinion, it is clear that the damages awarded in the present case undoubtedly fall within the expression "and any other profits arising from property" in Section 10(1)(f).

For all these reasons the appeal is dismissed with costs.

40 Sd. WEE CHONG JIN
CHIEF JUSTICE, SINGAPORE.
Sd. KULASEKARAM
JUDGE.
Sd. TAN AH TAH
JUDGE.

In the Court
of Appeal

No. 11

FORMAL ORDER OF THE COURT OF APPEAL

No. 11

Formal Order of
the Court of
Appeal
19th November
1974

CORAM:

THE HONOURABLE THE CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE KULASEKARAM

THE HONOURABLE MR. JUSTICE TAN AH TAH

The 12th day of November, 1974

This appeal coming on for hearing on the 15th and 16th days of October, 1974, in the presence of Counsel for the Appellants and for the Respondents and upon reading the Record of Appeal and upon hearing Counsel for the Appellants and for the Respondents it was ordered that the said appeal should stand for Judgment and the said appeal standing for Judgment this day in the presence of Counsel for the parties IT IS ORDERED that the Judgment of the Honourable Mr. Justice Cheor Singh dated the 16th day of November, 1973, be affirmed and this appeal dismissed with costs to be paid by the Appellants to the Respondents AND IT IS ORDERED that the sum of \$500.00 deposited as security for the Respondents' costs of the appeal be paid out to the Respondents' Solicitors.

10

20

Given under my hand and the Seal of Court
this 19th day of November, 1974.

Sd. R.G. MARTIN

ASSISTANT REGISTRAR

ORDER OF THE COURT OF APPEAL GRANTING
THE APPELLANTS LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Order of the
Court of Appeal
granting the
Appellants leave
to appeal to the
Judicial
Committee of the
Privy Council
17th February
1975

CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN
CHIEF JUSTICE, SINGAPORE

THE HONOURABLE MR. JUSTICE CHUA

THE HONOURABLE MR. JUSTICE D'COTTA

10 UPON Motion preferred unto the Court by the
abovenamed Appellants, Raja's Commercial College,
coming on for hearing this day in the presence of
Counsel for the Appellants and for the abovenamed
Respondents AND UPON reading the Notice of Motion
dated the 3rd day of February, 1975 and the
Affidavit of Govindan Natarajan affirmed and filed
herein on the 3rd day of February, 1975 for leave
to appeal to the Judicial Committee for Her
Britannic Majesty's Privy Council under Section 3
(1)(a)(i), (ii) and (iii) of the Judicial Committee
Act (Cap.8) AND UPON hearing what was alleged
20 by Counsel aforesaid THIS COURT DOTH GRANT LEAVE
to the said Raja's Commercial College to appeal to
the Judicial Committee of Her Britannic Majesty's
Privy Council against the whole of the Judgment of
the Court of Appeal delivered herein at Singapore
on the 12th day of November 1974, AND THIS COURT
DOTH DIRECT that the Appellants do give security
in the sum of \$3,000.00 for the payment of all
such costs as may become payable to the Respondents
in the event of the Appellants failing to proceed
30 with the appeal to the said Judicial Committee or
the said Judicial Committee ordering the
Appellants to pay the costs of the Respondents.

Dated this 17th day of February, 1975.

Sd.

ASSISTANT REGISTRAR

Exhibits

Exhibits
AB 3 4 & 5
Agreed Bundle
of corres-
pondence and
documents
dated various

EXHIBITS

Exhibits AB. 3, 4 & 5

AGREED BUNDLE OF CORRESPONDENCE AND
DOCUMENTS

Ref: JG/PP/296/67

BY HAND

Raja's Commercial College,
Gian Singh Building,
Raffles Place,
SINGAPORE.

10

AS SOLICITORS for and on behalf of Messrs.
Gian Singh & Co. Ltd., your Landlords, we hereby
give you notice to quit and deliver up possession
of that part of the Landlords' premises situate
at the second floor of Gian Singh Building,
Raffles Place, Singapore, comprising an area of
2917 square feet, in respect of which you are
their tenants on the 31st December, 1967, or
other the day on which the current month of your
tenancy will expire next after the end of one
calendar month from the date of your being served
with this notice.

20

Dated this 30th day of November, 1967.

.....

Solicitors,
30/35, Chartered Bank Chambers,
Singapore.

Received the above Notice of which this is
the duplicate.

Dated the day of ,1967.

.....

Ref: JG/PP/296/67

10th November, 1967

Exhibits

BY HAND

Exhibits
AB 3, 4 & 5
Agreed Bundle
of corres-
pondence and
documents
dated various
(continued)

Raja's Commercial College,
Gian Singh Building,
SINGAPORE.

Dear Sirs,

10 We are instructed by our Clients, Messrs. Gian Singh & Co. Ltd., to and do hereby serve you with a Notice to Quit that part of the second floor of our Clients' premises at Raffles Place occupied by you as our Clients' tenants.

The Notice to Quit is enclosed, and expires on the 31st December, 1967.

Yours faithfully,

Sd. Drew & Napier

c.c. Messrs. Lee & Lee,
SINGAPORE.

20 Your Ref: JG/PP/296/67
" DL/Sen/491/65

5th January, 1968

Messrs. Lee & Lee,
SINGAPORE.

Dear Sirs,

re: Raja's Commercial College

We refer to our letter of the 30th November last addressed to your Clients, Raja's Commercial College, a copy of which was sent to you.

30 The Notice to Quit has not been complied with by your Clients, and we are instructed to institute proceedings for the recovery of possession, in which proceedings there will be a claim for double rent.

Will you kindly let us know whether you have instructions to accept service of these proceedings?

Yours faithfully,

Sd. Drew & Napier.

Exhibits

Exhibit P.3

Exhibits P.3

Computation
of Damages
claimed by
Respondents
undated

COMPUTATION OF DAMAGES CLAIMED
BY RESPONDENTS

Suit No. 110 of 1968

Recoverable rent for the
period 1.1.1968 to
30.4.1970 @ \$1.43 per
square foot = 28 months \$116,796.68

LESS;

Actual rent paid for
period 1.1.1968 to
30.4.1970 @ \$0.75 per
square foot - 28 months 61,257.00 \$ 55,539.68

10

Recoverable rent for the
period 1.5.1970 to
30.11.1973 @ \$1.80 per
square foot = 43 months \$225,775.80

LESS:

Actual rent paid for
period 1.5.1970 to
30.11.1973 @ \$0.75 per
square foot = 43 months 94,073.25 131,702.55

20

Total - \$187,242.23

Exhibit P.4

COPY SUB-LEASE GIAN SINGH & CO.
LTD. TO ORIENTAL EMPORIUM LTD.

Exhibits

Exhibit P.4
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
Oriental Emporium
Ltd.
1968

THIS SUB-LEASE made the _____ day of _____
 . One thousand nine hundred and sixty
 eight (1968) BETWEEN GIAN SINGH & COMPANY LIMITED
 a company incorporated in Singapore and having its
 registered office at No. 30-1 Raffles Place,
 Singapore (hereinafter called "the Lessor" which
 10 expression shall where the context so admits include
 its successors and assigns) of the one part AND
 ORIENTAL EMPORIUM LIMITED, a company incorporated
 in Singapore and having its registered office at
 No. 13, Circular Road, Singapore (hereinafter
 called "the Lessee" which expression shall where
 the context so admits include its successors and
 assigns) of the other part.

WHEREAS by a Lease dated the 21st day of
 March 1968 (Registered in Volume _____ No. _____)
 20 and made between Balwant Singh (son of Mehar Singh)
 of the first part the Lessor of the second part
 and Overseas Union Bank Limited of the third part
 the premises therein described were leased to the
 Lessor for the period of five years with option
 to have the said Lease renewed for a further
 period of two years on the expiration thereof
 (hereinafter called "the said Lease").

NOW THIS DEED WITNESSETH as follows:-

1. The Lessor HEREBY DEMISES unto the Lessee ALL
 30 the first floor of the building situate and known
 as No. 30-1 Raffles Place, Singapore (hereinafter
 referred to as "the demised premises") and which
 said building (hereinafter referred to as "the
 said building") is standing on Government Resurvey
 Lot Nos. 275 and 235-4 of Town Subdivision I
 comprised in and demised by Government Leases Nos.
 15 and 1573 TOGETHER WITH the right to use (in
 common with all other persons entitled thereto)
 40 the lift, toilets and conveniences on the first
 floor of the said building and the right of ingress
 and egress for the Lessee its customers and others
 for its advantage in common with the Lessor its
 servants and other tenants over and along the
 staircases and passages leading to the demised
 premises TO HOLD the same unto the Lessee for five
 years less one day from the 1st day of February
 1967, PAYING THEREFOR during the said term monthly

Exhibits

Exhibit P.4
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
Oriental Emporium
Ltd.
1968
(continued)

rent of \$10,000-00 (Dollars Ten thousand only) for the demised premises payable in advance on the 1st day of each calendar month.

2. The Lessor, having already handed over vacant possession of the demised premises to the Lessee, shall do everything necessary whenever requested by the Lessee, to facilitate the redecoration, alteration, installation of air-conditioning and other plant and all other work incidental thereto at the expense of the Lessee and the Lessee, having already paid the sum of \$10,000-00 by way of deposit of one month's rent to the Lessor to the credit of the Lessor's account No. 2042 with the Overseas Union Bank Limited, at Raffles Place, Singapore, and a further total sum of \$50,000-00 by way of deposit of another five months' rent to the Lessor, making a grand total of \$60,000-00, this grand total of \$60,000-00 shall be held by the Lessor and applied towards payment of rent for the last six months of the said term.

10

20

3. The Lessee shall continue to pay the monthly rent as and when it shall fall due to the Lessor to the credit of the Lessor's said account with the said bank until further notice from the Lessor.

4. The Lessee hereby covenants with the Lessor that the Lessee will throughout the said term perform and observe the conditions and stipulations hereunder as follows:-

(a) To pay the said rent at the times and in manner aforesaid.

30

(b) To keep the demised premises in tenant-able repair and good condition throughout the term,

(c) To pay all charges in respect of electricity and water consumed on the demised premises.

(d) To permit the Lessor and the Head Lessor and their agents with or without workmen and others at all reasonable times to enter upon and examine the condition of the demised premises and to execute repairs to the same.

40

(e) Not to do or suffer or permit to be done anything whereby any policy of insurance on the demised premises or any part thereof against

damage by fire or otherwise for the time being may become void or voidable whereby any increased premium may become due in respect thereof.

(f) To use the demised premises as a departmental store in conjunction with the ground floor of the said building held by the Lessee under a separate Sub-Lease.

10 (g) Not to suffer any part of the demised premises to be so used as to cause annoyance or inconvenience to the occupiers of adjacent or neighbouring buildings.

(h) Not to assign underlet or part with the possession of the demised premises or any part thereof without the written consent of the Lessor.

20 (i) To yield up the demised premises at the determination of the term in such state of repair condition order and preservation as shall be in accordance with the Lessee's covenants herein contained.

5. The Lessor hereby covenants with the Lessee that it will throughout the term perform and observe the conditions and stipulations hereunder as follows:-

(a) To keep all the external parts of the demised premises in tenantable repair.

(b) To provide the Lessee with separate meters for water and electricity.

30 (c) At all times throughout the term to keep the demised premises insured against loss or damage by fire with some insurance office and to make all payments necessary for the above purposes within ten days after the same shall become payable and to produce to the Lessee on demand the policies of such insurance and the receipt for the last such payment in respect of each policy and in the event of the demised premises being damaged or
40 destroyed by fire, to re-instate and re-build the same at its own expense and with all convenient speed.

(d) That the Lessee paying the rent and

Exhibits

Exhibit P.4
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
Oriental Emporium
Ltd.
1968
(continued)

Exhibits

Exhibit P.4
 Copy Sub-Lease
 Gian Singh & Co.
 Ltd. to
 Oriental Emporium
 Ltd.
 1968
 (continued)

performing the Lessee's covenants shall peaceably hold and enjoy the demised premises during the term without any interruption by the Lessor or any person rightfully claiming under or in trust for it.

(e) To permit the Lessee to affix or display any signboards and festive decorations on the facade and outside the demised premises.

(f) To pay the rent thereby reserved and observe the covenants contained in the said Lease under which the Lessor holds the demised premises and to keep the Lessee indemnified against the same and against all rates taxes and outgoings whatsoever which now or hereafter may become payable in respect of the demised premises.

10

(g) To observe and perform and keep the Lessee indemnified against all liability under the covenants, conditions and stipulations in the said Lease so far as they are applicable to the demised premises.

20

(h) Not to omit or suffer anything by reason whereof a right of re-entry may accrue under the said Lease.

(i) To permit the Lessee at any time on or before the expiration hereof to alter, modify replace, discard or remove all the air-conditioning plant and its parts, all the furniture, fittings and fixtures installed by the Lessee without making any claim thereon the Lessee nevertheless making good all damage caused thereby.

30

6. If the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire explosion or any other inevitable cause so as to be unfit for occupation or use then and in every such case the rent payable hereunder by the Lessee in respect of any period (if any) while the demised premises or any part thereof shall continue to be unfit for occupation and use by reason of such damage then the rent or a fair and just proportion thereof shall be suspended and cease to be payable until the demised premises or such part thereof shall have been re-instated or re-built and made fit for occupation or use.

40

7. In the event of an increase in the percentage of the rate of property tax above the present rate of 36% the Lessee shall pay to the Lessor such increased percentage based on the annual value of \$10,000-00 per month but limited to the maximum of \$200-00 per month notwithstanding that such increased percentage based on the said annual value may exceed the sum of \$200-00 per month.

Exhibits

Exhibit P.4
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
Oriental Emporium
Ltd.
1968
(continued)

10 8. In the event of a decrease in the percentage of the rate of property tax below the present rate of 36%. the Lessee shall pay to the Lessor the monthly rent of \$10,000-00 less such decreased percentage based on the annual value of \$10,000-00 per month but limited to the maximum of \$200-00 per month notwithstanding that such decreased percentage based on the said annual value may exceed the sum of \$200-00 per month.

20 9. If the Lessee shall be desirous of having the Sub-Lease hereby created extended for a further term of one year and nine months at the expiration of the term hereby granted, the Lessee shall on or before the 31st day of January, 1972, give to the Lessor notice in writing of its desire then the Lessor shall lease the demised premises to the Lessee for such further term at the same rent provided herein and subject in all respects to the same covenants conditions and stipulations as hereinbefore contained except this clause for renewal.

30 IN WITNESS WHEREOF the Lessor and the Lessee have caused the respective Common Seals to be hereunto affixed the day and year first above written.

The Common Seal of GIAN SINGH & COMPANY LIMITED was hereto affixed in the presence of :-)

)) Director

)) Secretary

The Common Seal of ORIENTAL EMPORIUM LIMITED was hereto affixed in the presence of :-)

40 Sd.)) Director

Sd.)) Secretary

Exhibits

Exhibit P.4
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
Oriental Emporium
Ltd.
1968
(continued)

I, _____ an Advocate and Solicitor
of the High Court of the Republic of Singapore
practising in Singapore hereby certify that on the
_____ day of _____ A.D. 1968, the Common
Seal of GIAN SINGH & COMPANY LIMITED was duly
affixed to the above written instrument at
Singapore in my presence in accordance with the
regulations of the said Company (which regulations
have been produced and shown to me).

Witness my hand this _____ day of _____ 1968. 10

I, SHOO KHOON LEE, an Advocate and Solicitor
of the High Court of the Republic of Singapore
practising in Singapore hereby certify that on the
27th day of March A.D. 1968, the Common Seal of
ORIENTAL EMPORIUM LIMITED was duly affixed to the
within written instrument at Singapore in my
presence in accordance with the regulations of the
said Company (which regulations have been produced
and shown to me).

Witness my hand this 27th day of March 1968. 20

Sd.

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
America National
Trust and
Savings
Association
28th May 1971

Exhibit P.5.

COPY SUB-LEASE GIAN SINGH & CO.
LTD. TO AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

THIS SUB-LEASE is made the 28th day of May,
One thousand nine hundred and seventy-one (1971)
Between GIAN SINGH & COMPANY (PRIVATE) LIMITED a
company incorporated in the Republic of Singapore
and having its registered office at No. 30-1,
Raffles Place, Singapore (hereinafter called "the
Sub-Lessor" which expression shall where the
context so admits include the person for the time
being entitled to the reversion immediately
expectant upon the term hereby created) of the one
part and BANK OF AMERICA NATIONAL TRUST & SAVINGS
ASSOCIATION a banking association incorporated under
the laws of California, United States of America
and having an office or place of business at 31,

30

Raffles Place, Singapore (hereinafter called "the Sub-lessee which expression shall where the context so admits include its successors in title) of the other part.

NOW THIS INDENTURE WITNESSETH as follows:-

Exhibits

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
America National
Trust and
Savings
Association
18th May 1971
(continued)

- 10 1. IN CONSIDERATION of the rent hereinafter reserved and of the covenants by the Sub-Lessee hereinafter contained the Sub-Lessor as Sub-lessor hereby demises unto the Sub-lessee ALL That the fourth floor measuring approximately 7,450 square feet of the buildings known as No. 30-1 Raffles Place, Singapore and more particularly delineated and edged red on the plan annexed hereto and erected on Government Resurvey Lots Nos. 275 and 235-4 of Town Sub-division I and comprised in and demised by Government Leases Nos. 15 and 1573 (hereinafter referred to as "the demised premises") together with the right to use the lift and the right of ingress and egress for the Sub-lessee its servants and licensees over and along the staircases and passages leading to the demised premises TO HOLD the same unto the Sub-lessee for the term of 5 years from the 1st day of May, 1970 YIELDING AND PAYING therefor, during the said term the monthly rent of Singapore Dollars Twelve thousand five hundred (~~S\$~~12,500.00) payable in advance on the 1st day of every calendar month, for the month then commencing subject to the terms and conditions hereinafter contained.
- 20
- 30 2. The Sub-lessee hereby covenants with the Sub-lessor as follows:-
- (a) To pay the said rent at the times and in manner as aforesaid.
- (b) To pay and discharge that portion only of any increase in property tax due to the rate of assessment on the said property being increased above the annual rate of thirty-six per cent (36%)
- 40 (c) To pay and discharge all charges for water electricity and gas supplied to the demised premises
- (d) At all times during the said term to keep the interior of the demised premises in good and tenantable repair and condition fair wear and tear damage by fire white ants storm

Exhibits

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
America National
Trust and
Savings
Association
18th May 1971
(continued)

tempest Act of God riot and civil commotion excepted.

(e) To permit the Sub-lessor or their agents with or without workmen and others from time to time at all reasonable and convenient hours in the day time to enter into and upon the demised premises to view and examine the state and condition thereof provided that the Sub-lessor shall give to the Sub-lessee not less than two days' notice in writing of such intended entry to execute and do any repairs or work which the Sub-lessee is liable hereunder and in respect of which notice shall have been served on the Sub-lessee.

10

(f) Not at any time during the said term to carry on or permit or suffer to be carried on in or upon the demised premises any trade or business of a dangerous or offensive nature or which may be a nuisance or annoyance to the Sub-lessor or the occupiers of the adjoining property.

20

(g) To use the demised premises for business purposes only.

(h) Not to sub-let or assign the demised premises or any part thereof without the previous consent in writing of the Sub-lessor in the case of any subsidiary or associate company of the Sub-lessee.

(i) Not to do or suffer any act deed matter or thing whereby the existing or any future fire insurance policy on the demised premises or on any part thereof in the name of the Sub-lessor shall or may become void or voidable or whereby the premium thereon may be liable to be increased and will repay to the Sub-lessor all sums paid by way of increased premium and all expenses incurred by them in or about any renewal of such policy or policies rendered necessary by any breach of this covenant all of which payments shall be included in the rent hereinbefore reserved.

30

40

3. The Sub-lessor hereby covenants with the Sub-lessee as follows:-

(a) That the Sub-lessee duly paying the rent

hereby reserved and observing and performing the covenants herein contained and on its part to be observed and performed shall and may peaceably and quietly hold and enjoy the demised premises without any interruption or interference from or by the Sub-lessor or any person claiming through or under them.

10 (b) To pay all quit rent rates taxes and other outgoings which now are or hereafter shall be imposed or assessed upon the demised premises.

(c) To maintain and keep the main structure walls and roofs and exterior of the demised premises in good and tenantable repair and condition throughout the term hereby created.

20 (d) To insure and keep insured the demised premises from loss or damage by fire up to the full insurable value thereof and to pay all premia necessary for that purpose and in case of damage by fire (unless the insurance moneys become irrecoverable through any act or default of any person in occupation of the demised premises) to re-instate the same as speedily as possible.

30 (e) To permit the Sub-lessee to erect such internal partitions and other works and to make such alterations in the interior lay-out or appearance of the demised premises as the Sub-lessee thinks fit subject to compliance with all laws and regulations.

40 (f) Not to keep or permit to be kept in any part of the building in which the demised premises are situated any materials of a dangerous or hazardous nature or the keeping of which constitutes a contravention of any written law, regulations, by-laws or the directions of any competent authority or in respect of which an increased rate of insurance is usually or may actually be required or the keeping of which may cause the fire policy in respect thereof to become null and void or voidable.

(g) To permit the Sub-lessee to affix or erect such signs signboards or other structures on the exterior of the demised premises as the

Exhibits

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
America National
Trust and
Savings
Association
18th May 1971
(continued)

Exhibits

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
America National
Trust and
Savings
Association
18th May 1971
(continued)

Sub-lessee may think fit subject to compliance with any written law or regulation affecting such right.

(h) To maintain repair cleanse repair and otherwise keep in good and tenantable condition the passenger lifts entrances staircases and other parts of the building enjoyed or used by the Sub-lessee in common with others.

(i) During the said term to pay the rent reserved by the superior lease and to perform and observe the covenants therein contained.

10

4. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED BETWEEN THE PARTIES HERETO as follows:-

(a) If the rent hereby reserved or any part thereof shall at any time be unpaid for 21 days after the same shall have become due and after receipt of a formal demand or if any covenant or stipulation on the Sub-lessee's part herein contained shall not be performed or observed within 21 days after receipt of notice requiring performance from the Sub-lessor or if the Sub-lessee shall enter in liquidation voluntary or compulsory save except for the purpose of reconstruction and amalgamation or shall enter into any composition with its creditors then and in every such case it shall be lawful for the Sub-lessor at any time thereafter to re-enter the demised premises or any part thereof in the name of the whole and thereupon this lease shall be absolutely determined without prejudice to any claim of the Sub-lessor against the Sub-lessee in respect of any antecedent breach by the Sub-lessee or any of the foregoing covenants.

20

30

(b) In the event that the demised premises or any part thereof be destroyed or damaged by fire or from any other cause, so as to become totally unfit for occupation and use by the Sub-lessee then the rent payable hereunder shall cease to be payable during the period whilst the demised premises are so unfit for occupation or use.

40

(c) In the event of the Sub-lessee not being

able to occupy or use the demised premises for the purpose of carrying on its business as a Bank as a result:-

Exhibits

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
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18th May 1971
(continued)

- (i) compulsory acquisition thereof by the Government or other competent authority;
- (ii) deprivation or refusal by any competent authority having jurisdiction in Singapore or in the place of incorporation of the Sub-lessee or the Sub-lessee's authority permit or licence to carry on such business;
- (iii) any prohibition by any competent authority whereby the demised premises cannot be used as a Bank;
- (iv) war, state of war, confrontation or breaking-off of diplomatic relations whereby the Sub-lessee is directed to terminate or is obliged or considers it necessary to cease its business as a Bank;

it shall be entitled to determine the term hereby created by giving to the Sub-lessor one month's notice in writing expiring at any time.

(d) That if the Sub-lessor commits a breach of any of the covenants herein on its part to be observed and performed and fails to remedy such breach within the period to be stipulated by the Sub-lessee in a notice for such purpose the Sub-lessee may determine the term hereby created by giving the Sub-lessor one month's notice in writing expiring at any time.

(e) Upon the determination of the term hereby created in accordance with the preceding paragraphs (c) and (d) the Sub-lessee shall be entitled to recover from the Sub-lessor forthwith all rents paid in advance.

(f) At the expiration or sooner determination of this Lease the Sub-lessee shall be entitled to remove all fixtures and fittings affixed to or installed in the demised premises the Sub-lessee nevertheless repairing and making good any damage caused by such removal, and the Sub-lessor hereby acknowledges and confirms that

Exhibits

Exhibit P.5
Gian Singh & Co.
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Savings
Association
18th May 1971
(continued)

the said fixtures and fittings shall not by reason of attachment or connection to the demised premises become or be deemed to be appurtenant to the demised premises and that they shall at all times be and remain the property of the Sub-lessee.

5. Any notice requiring to be served hereunder shall be sufficiently served on the Sub-lessee if left addressed to it on the demised premises or forwarded to it by post or left at its usual or last known address in Singapore and shall be sufficiently served on the Sub-lessor if delivered to them personally or forwarded to them by post or left at their addresses above stated. A notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

10

IN WITNESS WHEREOF the Sub-Lessor has caused its Common Seal to be hereunto affixed and B.E. Baldwin as the Attorney of the Sub-Lessee has hereunto set his hand and seal the day and year first above written.

20

The Common Seal of GIAN SING & COMPANY (PRIVATE) LIMITED was hereunto affixed in the presence of:-

Sd. Director

Sd. Secretary

SIGNED SEALED AND DELIVERED by the above named BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION by its Attorney B.E. BALDWIN acting under a Power of Attorney dated the 9th day of February, 1971 (a copy of which was deposited in the Registry of the Supreme Court, Singapore, on the 30th day of March, 1971 and registered as No. 228 of 1971) in the presence of:-

30

B.E. Baldwin

40

Sd. CHAN SEK KEONG ADVOCATE & SOLICITOR SINGAPORE

I, CHAN SEK KEONG an Advocate and Solicitor of the Supreme Court in the Republic of Singapore practising in Singapore hereby certify that on the 21st day of May A.D. 1971 the Common Seal of GIAN SINGH & COMPANY (PRIVATE) LIMITED was duly affixed to the within written instrument at Singapore in my presence in accordance with the regulations of the said Company (which regulations have been produced and shown to me).

Exhibits

Exhibit P.5
Copy Sub-Lease
Gian Singh & Co.
Ltd. to
America National
Trust and
Savings
Association
18th May 1971
(continued)

10 WITNESS my hand 21st day of MAY 1971.

Sd.

Chan Sek Keong

On this 24th day of MAY A.D. 1971 before me CHAN SEK KEONG an Advocate and Solicitor of the Supreme Court in the Republic of Singapore practising in the Republic of Singapore personally appeared B.E. BALDWIN as the Attorney of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION who of my own personal knowledge I know to be the identical person whose name " B.E. Baldwin " is subscribed to the within written instrument and acknowledged that he had voluntarily executed this instrument at Singapore.

20

WITNESS my hand.

Sd.

Chan Sek Keong



Exhibits

Exhibit P.7
Application
to Inspect
Business File
15th November
1973

APPLICATION TO INSPECT BUSINESS FILE

To: Registrar of Business Names.

I hereby apply for permission to inspect the following file(s).

2. I understand that the inspection should be carried out in the Office and that under no circumstances should any file be taken out of the Office nor should any enclosure be removed from the file(s).

10

3. I undertake to return the file(s) immediately after inspection.

*Delete as necessary

Name of Appellant	NRIC No.
*Mr./Mrs./Miss DREW & NAPIER	0556996-F
Address Advocates & Solicitors Chartered Bank Chambers Singapore	Office Telephone No. 982633/5
FILE(S) REQUIRED FOR INSPECTION	FOR OFFICE USE

20

Name of Business	File No.
YIN YAN CONTRACTORS	

Total Fee
S

Paid

Receipt
No.

15th Nov., '73 (LIM THIAM KIN)

Date	Signature of Applicant	Cashier's Signature
Above file(s) received for Inspection	(LIM THIAM KIM)	Applicant attended to by:

30

Signature of Applicant	Signature
------------------------	-----------

File(s) returned
by applicant to:

Signature of
Recipient

Exhibit P.10

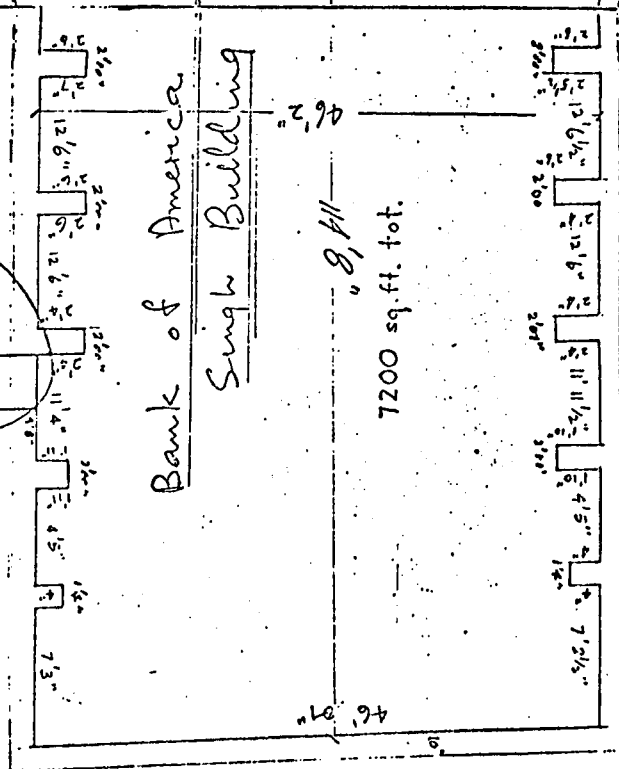
COPY PLAN OF 3RD FLOOR OF GIAN SINGH BUILDINGS

Exhibits
 Exhibit P.10
 Copy Plan of
 3rd Floor of
 Gian Singh
 Buildings

Gian Singh Building

3rd. Floor

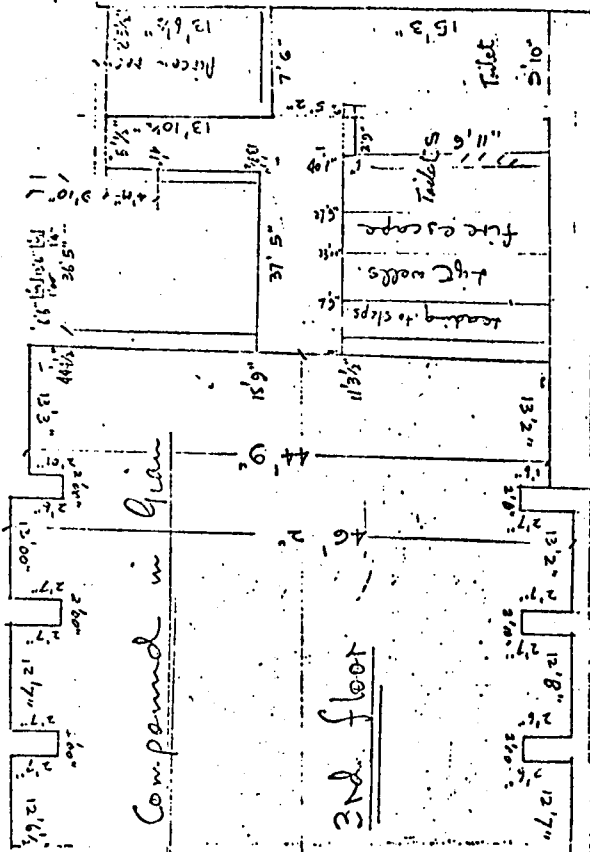
Entrance to Bank of America Building



7200 sq. ft. tot.

Compound in Gian

3rd floor



Lift wells and staircases = 510 sq. ft.

Note: Survey done on 15.11.73.

[Signature]
 15.11.73

HIGH COURT
 SINGAPORE
 EXHIBIT P.10
 IN S.110-68
 P.10-11-73
 Registrar

Exhibits

Exhibits "A",
"B"-1, "B"-2,
"C"-1, "C"-2,
& "D"

Exhibits "A", "B"-1, "B"-2, "C"-1,
"C"-2 & "D".

CALCULATIONS OF RENTS SUBMITTED
BY APPELLANTS AND RESPONDENTS
RESPECTIVELY AT HEARING OF THE
APPEAL

ORIENTAL EMPORIUM

\$10,000 per month @ \$1.43 per sq.ft.
°. . Area - $\frac{10,000.00}{1.43}$ = 6993 sq. ft.

10

Exhibit "B"-1

BANK OF AMERICA

7450 sq. ft. @ \$12,500.00
°. . 1 sq. ft. = $\frac{12,500.00}{7450}$ = \$1.67

Exhibit "B"-2

BANK OF AMERICA

Rent alleged	\$1.80
Rent per Sub Lease	<u>1.67</u>
Difference	-.13 cents

13 cents X 2917 sq. ft. = \$ 379.21 p.m.

1.5.1970 to 30.11.1973 = 43 months at

\$379.21 per month = \$16,306.03

20

CHINESE EMPORIUM

Total area 7,200 sq.ft.
 Less (say) for stairs and lift walls 200 sq.ft.
 7,000 sq.ft.

7,000 sq.ft @ \$10,000 p.m.

Therefore 1 sq.ft. = $\frac{10,000}{7,000} = \$1.43$ (to nearest cent)

Exhibits

Exhibits "A",
 "B"-1. "B"-2,
 "C"-1, "C"-2,
 & "D"
 Calculations
 of rents
 submitted by
 Appellants
 and Respondents
 respectively
 at Hearing of
 the Appeal
 Undated
 Exhibit "C"-1.

CHINESE EMPORIUM

10

(if full account taken of space occupied by stairs and lifts)

Area 7,200 sq.ft.
 Less for lifts and stairs \$10 sq.ft.
 Actual net area 6,690 sq.ft.

6,690 sq.ft. @ \$10,000 p.m.

therefore 1 sq.ft. = $\frac{10,000}{6,690} = \$1.50$ (to nearest cent)

Exhibit "C"-2

BANK OF AMERICA

20

Total area 7,450 sq.ft.
 Less (say) for stairs and lifts well 510 sq.ft.
 6,940 sq.ft.

7,000 sq.ft @ \$12,500 p.m.

therefore 1 sq.ft. = $\frac{12,500}{6940} = \$1.80$ (to nearest cent)

Exhibit "D"

No. 14 of 1975

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

RAJA'S COMMERCIAL COLLEGE
(sued as a firm)

Appellants
(Defendants)

- and -

GIAN SINGH & COMPANY LIMITED

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill,
London EC3V 9DU.

Solicitors for the Appellants.

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD.

Solicitors for the Respondents.

C