

No. 7 of 1979

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

B E T W E E N :

CHIN AH LOY

Appellant

- and -

ATTORNEY-GENERAL

Respondent

10

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from the judgment of the Court of Appeal of the Republic of Singapore dated the 24th November 1978 which set aside a judgment of Choor Singh J ordering that the Appellant recover from the Respondent \$604,890.00 and costs and adjudging that the Appellant's claim be dismissed and further ordering that he pay the Respondent's costs of the Appeal and of the trial below.

59-60 (Order)
48-59 (Judgment)

20

2. The Respondent appears for the Government of the Republic of Singapore, who are hereinafter referred to as "the Government".

30

3. The Government desired to let the premises intended to comprise a duty-free shop on the first floor of the Arrival Hall at Singapore Airport, and invited tenders for the tenancy of the said shop. The Appellant tendered, and the Government accepted his tender and offered to grant to the Appellant a tenancy to commence upon the 1st February 1972 upon the terms set out in their letter dated 11th January 1972. The said letter referred to the duration of the proposed tenancy and to an option to extend the proposed tenancy in these terms:-

71-72

RECORD

- 71 "Your tenancy will commence on the 1st February 1972 for a period of 3 years with an option for extension of 3 years subject to the D.C.A. being satisfied with the quality of the services provided and the prices charged."
- 72-74 4. By letter dated the 19th January 1972 the Appellant wrote "I confirm my acceptance of your offer to appoint me as the operator of the above shop according to your terms and conditions with the exceptions of the following" and sought to negotiate the Government's agreement to the tenancy commencing on the 18th February 1972 and to their agreement to the Appellant being granted a monopoly for the sale of duty free goods on the first floor of the said Arrival Hall. These requests were rejected by the Government who on 3rd May 1972 sent the tenancy agreement to the Appellant for his signature. Clause 4(1) of the said tenancy agreement contained the following proviso for determination: 10
- 75
76-77
80-86 85 "(i) Notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other three (3) months' previous notice in writing." 20
- 77-78 5. By letter dated 24th June 1972 the Appellant (a) asked the Government to reconsider the inclusion in the tenancy agreement of the said clause 4(1) and (b) pointed out that in their letter of 11th January 1972 "you have given us an option for extension of 3 years" and that no such option was included in the tenancy agreement. The Government replied by letter dated 27th June 1972 (which letter was relied upon below by the Appellant) that: 30
- 71-72
79 (a) They were unable to re-consider clause 4(i), but that: "However, you may be re-assured that if you observe carefully the rules and regulations of the Tenancy Agreement, your tenancy may be considered as secure for the period in question" [The "period in question" was 3 years/ 40
- 71 (b) "The option for the extension of your tenancy as contained in my letter DCA/1/72

dated 11.1.72 is not repeated in the Agreement as this letter may be taken as part of your Tenancy Agreement with us."

6. The Appellant thereafter signed the said tenancy agreement, which was executed also by the Government and dated the 2nd August 1972. 80-86
7. By the said agreement the Government (acting by its Permanent Secretary, Ministry of Communications) demised to the Appellant the space therein described on the first and ground floors of the Arrival Hall, Passenger Terminal Building Singapore Airport for the term of three years from the 1st February 1972, but subject to determination as provided for by clause 4(i) of the agreement. 80-86
- 10
8. By Clause 2(x) of the agreement the Appellant agreed to use the demised premises for the sole purpose of exhibiting and selling duty free liquor and tobacco products. The Appellant did so use the demised premises. 85
8. By Clause 2(x) of the agreement the Appellant agreed to use the demised premises for the sole purpose of exhibiting and selling duty free liquor and tobacco products. The Appellant did so use the demised premises. 83
9. (a) By letter dated the 30th October 1974 (followed up by a further letter of 23rd November 1974) the Appellant sought to exercise the aforesaid option to extend his tenancy. 89-90
91-92
- (b) By letter dated 18th January 1975 (and which did not refer to the Appellant's said letters) the Government indicated to the Appellant that his tenancy would expire on the 31st January 1975 and required him then to vacate the said shop. 93
- 30
- (c) The Appellant's Advocate and Solicitors, Lee and Co by a letter dated and delivered by hand the 25th January 1975 queried why the Government had not confirmed that the Appellant's tenancy was extended. 94-95
10. (a) The Government replied to the Appellant's said letter of 30th October 1975 by a letter dated 31st January 1974 that it confirmed that the said option had been exercised and that "the Government has granted you an extension of the said Tenancy Agreement with effect from 1st February 1975 on the same terms and conditions as the said Tenancy Agreement. Nevertheless we hereby give you 3 months'
- 40

RECORD

- 96, 107 notice under clause 4(i) of the said Tenancy Agreement as extended hereunder to terminate your tenancy thereunder," and required that the Appellant vacated the demised premises "as soon as possible but not later than 30th April 1975."
- (b) The said letter was sent on the 31st January 1975 by registered post to the Appellant at 20 Hooper Road Singapore 9, and copies were sent first to him c/o Chin International (by hand) and to his advocates and solicitors, Messrs. Lee and Co aforesaid. 10
- 107 (c) The said letter would not have arrived in the ordinary course of registered post until the next day (1st February 1975) or later. The copy thereof sent to the Appellant c/o Chin and Co (and forming page 107 of the Record) shows by the indorsement thereon that it was "Received at 9.30a.m. on 1.2.1975." 20
- 96, 107 11. The Appellant declined to accept that the said letter of 31st January 1975 was an effective notice to determine his extended tenancy but the Government refused to withdraw the same and repossessed the said shop upon the expiry of the said notice on 30th April 1975.
- 98-99
100
101-102
- Writ 1-2
S/C 3-6
AM S/C 13-17 12. On 2nd May 1975 the Appellant commenced the present proceedings, alleging that the Government's repossession of the said shop was a trespass and was a breach by it of the covenant for quiet enjoyment given by it to its tenant (the Appellant) in clause 3(i) of the said agreement, because the Government's said notice to terminate the Appellant's extended tenancy upon the 30th April 1975 was invalid for one or other or both of two reasons, viz:- 30
- 85
96,107
- (i) It was given in breach of an express contractual stipulation. It was alleged that certain of the pre-contractual correspondence referred to in Paragraphs 4 and 5 above (being letters 71-72, 77-78, 79) formed part of the agreement between the parties or formed a separate but collateral agreement to the tenancy agreement whereby the Government had agreed not to exercise the proviso for determination contained in 40
- 71-72, 77-78
79 (-14
AM S/C
para.2)
- 14 (AM S/C
para.3)

clause 4(i) of the said agreement in respect of the Appellant's tenancy as extended by the exercise by him of his option to extend the same if the Appellant observed carefully the rules and regulations of the said agreement, and the notice was given in breach of that stipulation.

(ii) The notice was given before the commencement of the tenancy to which it related. (15 am S/C para 8)

10 13. The Honourable Mr. Justice Choor Singh tried the action upon the 15th, 16th and 17th March 1978, and the on the 17th March gave judgment for the Plaintiff (the Appellant) for \$604,890.00 and costs. 43

14. The learned Trial judge held: 40-43

(1) That the assurance contained in the Government's letter of 27th June 1972 was of contractual force: 41
79

20 "By giving this assurance the Director of Civil Aviation bound the Government of Singapore not to invoke the termination clause so long as the plaintiff carried out his obligations under the tenancy agreement." 41

and

(2) That contractual stipulation applied also to the tenancy as extended by the exercise of the Appellant's option: 41

30 "The tenancy was renewed with effect from the 1st February 1975 on the terms and conditions which applied to the first term of three years. This meant that the Government could terminate the second term of three years only when they found the Plaintiff had committed some breach of the tenancy agreement." 41

40 15. The learned trial judge did not specifically deal with the contention that the said notice failed because it was given before the tenancy to which it related had commenced, but observed that:

RECORD

- 41 "On the 31st January 1975 when the Government purported to terminate the second term by invoking clause 4(i), the plaintiff had not committed any breach of the tenancy agreement. In fact the tenancy agreement had not yet commenced. It commenced on 1st February 1975, but the notice to terminate the second term was given on 31st January 1975."
- 44 16. The Government being dissatisfied with the judgment of the Honourable Mr. Justice Choor Singh filed Notice of Appeal on the 17th April 1978 and 45-47 Petition of Appeal on the 18th May 1978, wherein the Government recited four grounds of appeal, being that the learned judge erred in law in holding that: 10
- 46 "(i) ... the letter of 27th June 1972 ... amounted to an assurance by the Government to the Plaintiff that the tenancy was secure for a three-year period so long as the Plaintiff carefully observed the rules and regulations of the tenancy agreement." 20
- (letter - 79)
- "(ii)... the said letter of 27th June 1972 modified the terms of clause 4(i) of the Tenancy Agreement and restricted the Government's right to terminate under that clause to only in the event of a breach on the part of the Plaintiff".
- "(iii)... on the exercise of the option by the Plaintiff for a second three-year tenancy, the assurance... given in the said letter... also applied to the second three-year term." 30
- 46 (iv) Related to the quantum of damages, which is no longer in issue.
17. (a) At the hearing of the said appeal on the 7th August 1978, the Government expressly abandoned its contentions as to damages, and the appeal proceeded on the basis that the sole issue was as to liability, it being common ground between the parties that if the judgment of the Honourable Mr. Justice Choor Singh were not reversed, then the said judgment should stand for \$604,890.00. 40
- (b) The Government is content to abide by that concession, and expressly agrees that

if the present appeal be allowed the consequence should be that judgment be restored for the same amount.

RECORD

10 18. The Court of Appeal (Wee Chong Jin, C.J., T Kulasekaram and D.C.D'Cotta J.J.) in a reserved unanimous judgment of the Court delivered on the 24th November 1978 allowed the Government's appeal, set aside the judgment of the learned trial judge and ordered the plaintiff (the present Appellant) to pay the costs of the appeal and of the trial. (48-59 Judgment) (59-60 Order)

19. The Court of Appeal held that:

(1) The assurance contained in the letter of 27th June 1972 "must be construed, and must have been understood by the parties, to mean the initial three-year term of the tenancy". 54

20 (2) That assurance was "not a term of the tenancy agreement which displaces the provisions of clause 4(i) but was a collateral warranty which is no longer binding on the Government after the expiry of the initial three-year term of the tenancy". 54

(3) In the alternative, either:

30 (a) the agreement between the parties was expressed to be for the extension of the initial three-year term of the tenancy at the option of the tenant, and should be treated as extending that term, as opposed to creating a new separate and successive three-year term; so that it mattered not if the notice to terminate was given on the 31st January 1975: 54-55

or

40 (b) upon the basis that the notice "was given and served on 31st January 1972 in relation to the extended term to expire on 30th April 1972" it was not avoided, because (i) the tenant had received that security of tenure for which he had bargained : "... in substance and in fact the tenant has 58

been given the enjoyment of all his rights, under the contract between the parties," and (ii) the English decision in Lower v. Sorrell /1963/ 1 QB959 was a decision which turned upon s. 23(1) of the Agricultural Holdings Act 1948 from which provision it was to be implied that a notice to quit for terminating a tenancy to which that Act applied must be given in a year of the tenancy and/or (iii) the validity of the notice should not turn upon extreme technicalities.

10

20. On behalf of the Respondent it will be contended that this Appeal should be dismissed with costs for the following and other

R E A S O N S

- (1), For the like reasons as were relied upon
- (2) by the Court of Appeal (and of which a
- and Summary is set out in Paragraph 19 of this
- (3) Case). 20

- (4) The notice exercising the option to determine the extended term was not 'given' until received by the addressee on 1st February 1975 and that it bears the date "31st January 1975" (or the assumed or actual receipt by him of any copy of the notice on 31st January 1975) is irrelevant.

- (5) (a) That the decision in Lower v. Sorrell /1963/ 1 QB 759 is confined to notices to quit periodic agricultural tenancies (where special English statutory rules apply). 30

- (b) In the further alternative, Lower v. Sorrell, supra, is confined to notices to quit periodic tenancies and does not apply to the exercise of an option to determine a term certain or does not so apply where although the term certain has not commenced in possession it has already been created so that the Contract under which and the term of years in relation to which the notice is given already is in being at the date the notice is given. 40

(c) Alternatively, if and insofar as Lower v. Sorrell supra, is not so confined, it was wrongly decided and ought not to be followed in the Republic of Singapore.

10

(6) That if, contrary to the view of the Court of Appeal the assurance given by the Director of Civil Aviation in his letter of 27th June 1972 was not understood by the parties to refer only to the initial three-year term of the tenancy, in any event the said assurance was not of contractual effect.

JOHN STUART COLYER QC

CHAO HICK TIN

No. 7 of 1979

IN THE PRIVY COUNCIL

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

B E T W E E N :

CHIN AH LOY Appellant

- and -

ATTORNEY-GENERAL Respondent

CASE FOR THE RESPONDENT

JAQUES & CO.
2 South Square,
Gray's Inn,
London WCLR 5HR.

Solicitors for the Respondent