

33/80

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 7 of 1979

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

CHIN AH LOY (Respondent) Appellant

- and -

ATTORNEY-GENERAL (Appellant) Respondent

R E C O R D O F P R O C E E D I N G S

Messrs Baker & McKenzie
Aldwych House
Aldwych
LONDON WC2B 4JP

Tel: 01-242 6531

Ref: TJH

Solicitors for the Appellant

Messrs. Jaques & Co
2 South Square
Gray's Inn
LONDON WC1R 5HR

Tel: 01-242 9755

Ref: MJM/8147/0014/SLS

Solicitors for the Respondent

ON APPEAL FROM
THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

CHIN AH LOY

(Respondent) Appellant

- and -

ATTORNEY-GENERAL

(Appellant) Respondent

RECORD OF PROCEEDINGS

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Duplicate Income Tax Return of Chin International for 1975	17th June 1975
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Yearbook of Statistics Singapore 1976/77 by Department of Statistics: copy front and page 123	undated
Monthly Digest of Statistics, Vol. XVII No. 2, February 1978 by Department of Statistics Singapore: copy front and page 60	undated
Income Tax assessment by Comptroller of Income Tax, Singapore ("CITS") for Chin International for 1974	2nd September 1974
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ON APPEAL FROM
THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

CHIN AH LOY (Respondent) Appellant

- and -

ATTORNEY-GENERAL (Appellant) Respondent

RECORD OF PROCEEDINGS

10

No. 1

WRIT OF SUMMONS AND STATEMENT OF CLAIM

In the High Court
of the Republic of
Singapore

No. 1

WRIT OF SUMMONS
IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Writ of Summons
and Statement of
Claim

2nd May 1975

Suit No. 1428)
of 1975)

B E T W E E N : CHIN AH LOY Plaintiff

- and -

ATTORNEY-GENERAL,
SINGAPORE Defendant

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

In the High Court
of the Republic of
Singapore

No. 1

Writ of Summons
and Statement of
Claim

2nd May 1975

continued

To: ATTORNEY-GENERAL, SINGAPORE
Attorney-General's Chambers,
Government Offices,
High Street,
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 CHIN AH LOY of No. 20 Hooper Road, Singapore, and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

10

WITNESS MR. TAN WEE KIAN Registrar of the
Supreme Court in Singapore the 2nd day of May 1975.

Plaintiff Solicitors.

Registrar
Supreme Court, Singapore

NOTE - This Writ may not be served more than twelve calendar months after the above date unless renewed by order of court.

20

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances), either personally or by Solicitor at the Registry of the Supreme Court.

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 \$5.00 with an addressed envelope to the Registrar, Supreme Court, Singapore, 6.

NOTE - If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitors for the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

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STATEMENT OF CLAIM

In the High Court
of the Republic of
Singapore

No. 1

Writ of Summons
and Statement of
Claim

2nd May 1975

continued

1. By an agreement constituted by the tender document bearing reference number DCA/ADM/52/60/Pt. V/VIII (GI) and by the exchange of letters dated 24th June, 1972 and 27th June, 1972 between the Plaintiff and the Government of the Republic of Singapore (hereinafter called "the Government") and by the agreement in writing dated the 2nd day of August, 1972 entered into between the Plaintiff of the one part and the Government of the other part (hereinafter collectively called "the said Agreement") the Government let the premises known as Shop No. 22 Arrival Hall, Singapore International Airport (hereinafter called "the said premises") to the Plaintiff for the purpose of exhibiting and selling duty free liquor and tobacco products for an initial period of three years commencing from 1st February, 1972 subject to a condition in clause 4(1) of the said Agreement that either the Government or the Plaintiff may terminate the tenancy at any time by giving to the other three months previous notice in writing.

2. It is an express term of the said Agreement that clause 4(1) of the said Agreement would not be invoked by the Government if the Plaintiff observes carefully the rules and regulations of the said Agreement.

3. It is also an express term of the said Agreement that subject to the Director of Civil Aviation being satisfied with the quality of the services provided and the prices charged by the Plaintiff, the Plaintiff shall have the option to extend the tenancy for a further period of three years after the expiry of the term on the 31st January, 1975 under the said Agreement.

4. It is also a further term of the said Agreement that the Plaintiff paying the rent and other charges reserved and observing and performing the said Agreement on his part therein contained shall peaceably hold and enjoy the said premises for the term of the said Agreement without any interruption by the Government or any person rightfully claiming under or in trust for the Government, and that the Plaintiff and his servant shall have the right to use in common with the Government and the tenants and occupiers of other portions of the Singapore International Airport, the lavatories, entrance, staircases, corridors, passages and other common facilities thereof.

In the High Court
of the Republic of
Singapore

—
No. 1

Writ of Summons
and Statement of
Claim

2nd May 1975

continued

5. Pursuant to the said Agreement, the Plaintiff duly took possession of the said premises.

6. By letter dated 30th October, 1974 from the Plaintiff to the Government, the Plaintiff exercised the option to extend the tenancy for a further period of three years pursuant to the said term referred to in paragraph 3 hereof.

7. By letter dated 31st January, 1975 to the Plaintiff, the Government accepted the Plaintiff's exercise of the option to extend the tenancy for a further period of three years and confirmed with the Plaintiff that he has been granted an extension of the tenancy for a further period of three years with effect from 1st February, 1975 upon the same terms and conditions as the said Agreement.

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8. By the said letter of the 31st January, 1975 the Government gave the Plaintiff three months notice under clause 4(1) of the said Agreement as extended and thereby purported to terminate the Plaintiff's tenancy thereunder which did not commence until the 1st day of February, 1975. The said notice was invalid and the Plaintiff's tenancy commenced to run with effect from the 1st day of February, 1975 and still subsists by virtue of the said Agreement as extended by the Government as aforesaid.

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9. Further and alternatively the purported termination of the Plaintiff's tenancy was in breach of the express terms of the said Agreement mentioned in paragraph 2 above since at all material times the Plaintiff had been observing carefully the rules and regulations of the said Agreement and the purported termination was therefore invalid.

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10. In breach of the said Agreement, the Government required the Plaintiff to quit the said premises on the 30th day of April, 1975 and refused and continue to refuse to allow the Plaintiff his servants or agents :-

- (a) to enter that portion of the Singapore International Airport leading to the said premises;
- (b) to enter the said premises;
- (c) to do his business of exhibiting and selling duty free liquor and tobacco products.

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11. In further breach of the term of the said Agreement, the Government its servants or agents threatened and continue to threaten to re-enter the said premises and to forcefully remove the business counter of the Plaintiff and his stock of liquor and tobacco products.

12. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

AND the Plaintiff claims :-

- 10 (i) a declaration that the Government's said notice of 31st January, 1975 purporting to terminate the extended tenancy of three years commencing 1st February, 1975 is invalid;
- (ii) a declaration that the Government's said notice of 31st January, 1975 purporting to terminate the extended tenancy of three years commencing 1st February, 1975 is in breach of the express term of the said Agreement set out in paragraph 2 hereof;
- 20 (iii) a declaration that the Plaintiff his servants or agents shall be entitled to :-
- (a) have access, at all times and remain and make use of that portion of the Singapore International Airport leading to Shop No. 22 Arrival Hall, Singapore International Airport;
- (b) enter at all times and to remain at Shop No. 22, Arrival Hall, Singapore International Airport;
- 30 (c) do business of exhibiting and selling duty free liquor and tobacco products;
- (d) be issued with Seasonal and Temporary passes for access to Shop No. 22 Arrival Hall, Singapore International Airport.
- (iv) damages;

In the High Court
of the Republic of
Singapore

—
No. 1

Writ of Summons
and Statement of
Claim

2nd May 1975

continued

In the High Court
of the Republic of
Singapore

No. 1

Writ of Summons
and Statement of
Claim

2nd May 1975

continued

- (v) costs;
- (vi) liberty to apply;
- (vii) such further and other reliefs as the Court shall deem fit.

Dated this 2nd day of May, 1975.

SOLICITORS FOR THE PLAINTIFF

~~And \$125.00 (or such sum as may be allowed on taxation) for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of \$60.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff or his solicitors within eight days after service hereof (inclusive of the day of service), further proceedings will be stayed, but if it appears from the indorsement on the Writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, or if the defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into Court within the said time and notice of such payment in is given to the plaintiff or his solicitors.~~

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This writ is issued by Messrs. TAN KIM SENG & CO. 6-A, Telok Ayer Street, 1st Floor, Singapore, solicitors for the said plaintiff are CHIN AH LOY of No. 20 Hooper Road, Singapore.

This Writ was served by _____ by
 way of personal service/in accordance with the terms of _____ of
 an order for substituted service on the defendant who is _____ 30
 known to me/who was pointed out to me by _____ /
 who admitted to me that he was _____ at
 _____ on the _____
 day of _____ 197

Indorsed the _____ day of _____ 197

Process Server.

In the High Court
of the Republic
of Singapore

No. 2

Defence

22nd May 1975

continued

thereupon terminated.

8. The Defendant denies paragraphs 9 to 12 of the Statement of Claim.

9. The Defendant says that the Plaintiff failed to pay the estimated surcharge in breach of clause 4(ii) of the Agreement whereupon the Government by letter dated 5th April, 1975, gave notice to the Plaintiff that by reason of such breach and if he did not vacate the premises on or before 30th April, 1975, the Government would forthwith exercise their right under that clause to re-enter the premises. 10

10. Clause 4(ii) of the Agreement provided, inter alia, that if the estimated surcharge or any part thereof shall be unpaid for 21 days after becoming payable (whether formally demanded or not) it shall be lawful for the Landlord at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord in respect of any antecedent breach of the Tenant's covenants or stipulation therein contained. 20

11. Clause 1(2)(ii) of the Agreement provided, inter alia, that the estimated surcharge for the whole period of 3 months shall be paid in advance on or before the 15th day of the first month and such estimated surcharge shall be calculated on the monthly average figure of gross sales for the previous 3 months.

12. The Defendant says that the estimated surcharge for the whole period of the months of February, March and April, 1975 was payable in advance on or before 15th February, 1975; that the Plaintiff failed to pay any such estimated surcharge, and that, in any event, no estimated surcharge was paid within 21 days from 15th February, 1975. 30

13. The Defendant further says that in pursuance of the notices contained in both the said letters dated 31st January, 1975, and 5th April, 1975, the Government re-entered the premises on 1st May, 1975, and that the Plaintiff left the premises on 30th April, 1975, leaving behind some counters, stock of liquor and tobacco products which have since been removed. 40

14. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation of fact contained in the Statement of Claim as if the same were set forth herein and specifically traversed.

WHEREFORE the Defendant denies that the Plaintiff is entitled to any of the reliefs set out under paragraph 12 of the Statement of Claim and prays that the Plaintiff's claim be dismissed with costs.

Dated this 22nd day of May, 1975.

In the High Court
of the Republic
of Singapore

No. 2

Defence
22nd May 1975
continued

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for Attorney-General

To: M/s Tan Kim Seng & Co.

No. 3

R E P L Y

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1428)
of 1975)

B E T W E E N : CHIN AH LOY Plaintiff

- and -

ATTORNEY-GENERAL,
SINGAPORE Defendant

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R E P L Y

1. The Plaintiff joins issue with the Government upon its Defence save in so far as the same consists of admissions.

2. As to paragraphs 9 to 12 of the Defence, the Plaintiff denies that he was liable to pay surcharge under clause 1(2)(ii) of the Agreement relating to the Plaintiff's tenancy from the 1st of February, 1975 on the same terms and conditions as those contained in the Agreement dated the 2nd August, 1972 but contends that he was liable for payment of surcharge under clause 1(2)(i) in respect of the first 3 months of the said tenancy (namely,

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No. 3

Reply
12th June 1975

In the High Court
of the Republic
of Singapore

No. 3

Reply

12th June 1975

continued

February, March and April 1975) payable on the 15th day of the month following each of these months.

3. In pursuance of the provisions of clause 1(2)(i) the Plaintiff made the following payments of surcharges, namely :-

<u>Date</u>	<u>Amount</u>	<u>Surcharge For</u>
17.3.75	\$17,181.02	February 1975
11.4.75	\$18,842.27	March 1975
26.4.75	\$ 47.50	March 1975
25.4.75	\$17,176.14	April 1975
2.6.75	\$ 3,341.08	April 1975
	<u>\$56,588.01</u>	

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4. The Plaintiff denies that he had been in breach of clause 4(ii) as alleged or otherwise.

5. If, which is denied, the Plaintiff was liable to pay surcharge under clause 1(2)(ii) the Government would still be disentitled to re-enter upon the demised premises since the receipt by the Government of the said sum of \$56,588.01 operated as an acceptance of surcharge payable under clause 1(2)(i) or alternatively as a waiver of the Government's right to surcharge under clause 1(2)(ii) and the Government was thereby precluded from relying on clause 4(ii) to re-enter upon the demised premises and the re-entering by the Government upon the demised premises was unlawful.

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6. In the further alternative, by accepting payments of the surcharges referred to in paragraph 3 above on the respective dates when the said surcharges were paid and with knowledge that the said payments were made under clause 1(2)(i) the Government represented to the Plaintiff that the Plaintiff was liable to payment of surcharge under clause 1(2)(i) or alternatively that the Government was entitled to surcharge under clause 1(2)(i). Relying on the representation of the Government constituted by the receipt of each payment of surcharge the Plaintiff continued to make payment of surcharge under clause 1(2)(i). In the premises, the Government is estopped from denying that the Plaintiff is liable to pay surcharge under clause 1(2)(i).

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7. In the further alternative, upon receipt of each payment by the Plaintiff of surcharge made under clause 1(2)(i) the Government never made any claim to surcharge payable under clause 1(2)(ii) and duly acknowledged receipt of each payment made by the Plaintiff under clause 1(2)(i) and by its silence permitted and induced the Plaintiff to pay surcharge under clause 1(2)(i) for the months of February, March and April 1975 or alternatively to believe that the Plaintiff is not liable to pay surcharge under clause 1(2)(ii). The Government is estopped from saying that the Plaintiff was liable at any time to pay surcharge under clause 1(2)(ii).

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8. In the further alternative, the Plaintiff states that the Government's right to re-entry (if any, which is not admitted), was not enforceable by reason of the failure on the part of the Government to comply with section 18 of the Conveyancing and Law of Property Act (Chapter 268).

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9. The Plaintiff denies paragraph 13 and states that he was locked out of and prevented from entering the demised premises by the Government its servants and agents on and after the 30th April, 1975.

10. In the premises, the Plaintiff claims to be entitled to relief from forfeiture of the Agreement by the Government.

Dated and Delivered this 12th day of June, 1975.

SOLICITORS FOR THE PLAINTIFF

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To: The Attorney-General, Singapore,
Attorney-General's Chambers,
Government Offices,
High Street,
SINGAPORE.

We consent to this Reply being
filed out of time.

Sgd. LEE BIAN TIAN

SOLICITORS FOR THE DEFENDANT.

In the High Court
of the Republic
of Singapore

No. 3

Reply

12th June 1975

continued

In the High Court
of the Republic
of Singapore

No. 4

ORDER OF COURT

No. 4

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Order of Court
22nd November
1977

Suit No. 1428)
of 1975)

B E T W E E N : CHIN AH LOY Plaintiff

- and -

ATTORNEY-GENERAL,
SINGAPORE Defendant

ORDER OF COURT

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BEFORE THE HONOURABLE THE CHIEF JUSTICE
IN CHAMBERS

Upon the application of the abovenamed Plaintiff made by way of Notice for Further Directions coming on for hearing this day And Upon Hearing Counsel for the Plaintiff and State Counsel for the Attorney-General IT IS ORDERED that the Plaintiff do have leave to amend his Statement of Claim in the manner shown in red ink in the copy thereof AND IT IS FURTHER ORDERED that the Plaintiff do within 14 days serve the Amended Statement of Claim on the Defendant and that the time for service of the Amended Defence be extended for 14 days after service of the Amended Statement of Claim and that the time for service of the Amended Reply be extended for 14 days after service of the Amended Defence AND IT IS LASTLY ORDERED that the costs of the application be the Defendant's in any event.

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Dated the 22nd day of November, 1977.

ASST. REGISTRAR

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No. 5

AMENDED STATEMENT OF CLAIM

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

In the High Court
of the Republic
of Singapore

No. 5

Suit No. 1428)
of 1975)

Amended
Statement of
Claim

B E T W E E N : CHIN AH LOY Plaintiff

1st December
1977

- and -

Amended in red
pursuant to an
Order of Court
dated the 22nd
day of November,
1977.

ATTORNEY-GENERAL,
SINGAPORE Defendant

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Solicitors for the
Plaintiff

AMENDED STATEMENT OF CLAIM

1. By an agreement constituted by :-

(a) the tender document bearing reference number
DCA/ADM/52/60/Pt. V/VIII(GI),

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(b) the exchange of letters dated the 11th January
1972 (letter A), 24th June 1972 (letter B) and 27th June
1972 (letter C) (hereinafter collectively called "the
said letters") between the Plaintiff and the Govern-
ment of the Republic of Singapore (hereinafter
called "the Government") and

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(c) an agreement in writing dated the 2nd day of
August 1972 (hereinafter referred to as "the written
agreement") entered into between the Plaintiff of
the one part and the Government of the other part
(all of which documents shall hereinafter be collec-
tively called "the said Agreement") the Government
let the premises known as Shop No. 22 Arrival Hall,
Singapore International Airport (hereinafter called
"the said premises") to the Plaintiff for the purpose
of exhibiting and selling duty free liquor and tobacco
products for an initial period of three years com-
mencing from 1st February 1972 (subject to a

In the High Court
of the Republic
of Singapore

No. 5

Amended
Statement of
Claim

1st December
1977

continued

condition in clause 4(i) of the written agreement that either the Government or the Plaintiff may terminate the tenancy at any time by giving to the other three months' previous notice in writing).

2. It was expressly agreed in the said Agreement that :-

(a) clause 4(i) of the written agreement would not be invoked by the Government if the Plaintiff observes carefully the rules and regulations of the said Agreement (letters B & C); and

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(b) the Plaintiff was entitled to an option to extend the said Agreement for a period of 3 years on the expiry of the term thereunder subject to the Director of Civil Aviation being satisfied with the quality of the services provided and prices charged by the Plaintiff (letters A & C).

3. If, which is denied, the said letters did not form part of the said Agreement, the Plaintiff states that at the time of and in consideration of the Plaintiff entering into the written agreement, the Government by their servants or agents orally and/or by the said letters agreed with and warranted to the Plaintiff as an agreement collateral to the written agreement to the intent that the Plaintiff should rely thereon that :-

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(a) clause 4(i) of the written agreement would not be invoked by the Government if the Plaintiff observed carefully the rules and regulations of the written agreement; and

(b) the Plaintiff was entitled to an option to extend the written agreement for a period of 3 years on the expiry of the term under the written agreement subject to the Director of Civil Aviation being satisfied with the quality of the services provided and prices charged by the Plaintiff.

30

4. It is also a further term of the said Agreement that the Plaintiff paying the rent and other charges reserved and observing and performing the said Agreement on his part therein contained shall peaceably hold and enjoy the said premises for the term of the said Agreement without any interruption by the Government or any person

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rightfully claiming under or in trust for the Government and that the Plaintiff and his servant shall have the right to use in common with the Government and the tenants and occupiers of other portions of the Singapore International Airport, the lavatories, entrance, staircases, corridors, passages and other common facilities thereof.

In the High Court
of the Republic
of Singapore

—
No. 5

Amended
Statement of
Claim

1st December
1977

continued

10 5. Relying on the collateral agreement and warranty referred to in clause 3 above, the Plaintiff duly entered into and completed the written agreement. Pursuant to the said Agreement and or alternatively the collateral agreement, the Plaintiff duly took possession of the said premises.

20 6. By letter dated 30th October 1974 from the Plaintiff to the Government, the Plaintiff exercised the option to extend the tenancy for a further period of three years pursuant to the said Agreement and/or alternatively the collateral agreement and the written agreement referred to in paragraphs 2 and 3 hereof and the said tenancy was duly extended on the same terms and conditions as aforesaid on receipt by the Government of the said letter of the 30th October 1974.

30 7. By letter dated 31st January 1975 to the Plaintiff, the Government accepted (if acceptance was necessary, which is not admitted) the Plaintiff's exercise of the option to extend the tenancy for a further period of three years and confirmed with the Plaintiff that he has been granted an extension of the tenancy for a further period of three years with effect from 1st February 1975 upon the same terms and conditions as the said Agreement.

40 8. By the said letter of the 31st January 1975, the Government gave the Plaintiff three months' notice of termination under clause 4(i) of the written agreement as extended and thereby purported to terminate the Plaintiff's tenancy before its commencement on the 1st day of February 1975. The said notice was invalid and the Plaintiff's tenancy as extended commenced to run with effect from the 1st day of February 1975.

9. Further and alternatively the termination of the Plaintiff's tenancy (even if valid, which is denied) was in breach of the express term of the said Agreement

In the High Court
of the Republic
of Singapore

No. 5

Amended
Statement of
Claim

1st December
1977

continued

mentioned in paragraph 2 above or alternatively, in breach of the collateral agreement and warranty mentioned in paragraph 3 above.

10. In breach of the said Agreement and or the collateral agreement and the written agreement, the Government required the Plaintiff to quit the said premises on the 30th day of April 1975 and refused and continue to refuse to allow the Plaintiff his servants or agents :-

- (a) to enter that portion of the Singapore International Airport leading to the said premises; 10
- (b) to enter the said premises;
- (c) to do his business of exhibiting and selling duty free liquor and tobacco products.

11. In further breach of the said Agreement and/or the collateral agreement and the written agreement, the Government at midnight on the 30th day of April, 1975 wrongfully entered the said premises, wrongfully and forcibly prevented the Plaintiff from having access to the said premises and thereby dispossessing and evicting him and subsequently wrongfully removed the Plaintiff's goods from the said premises. 20

12. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.

AND the Plaintiff claims :-

- (i) a declaration that the Government's said notice of 31st January 1975 purporting to terminate the extended tenancy of three years commencing 1st February 1975 is invalid; 30
- (ii) a declaration that the Government's said notice of 31st January 1975 purporting to terminate the extended tenancy of three years commencing 1st February 1975 is in breach of the express term of the said Agreement set out in paragraph 2 hereof and/or the collateral agreement and the

written agreement set out in paragraph 3 hereof;

In the High Court
of the Republic
of Singapore

No. 5

Amended
Statement of
Claim

1st December
1977

continued

- (iii) a declaration that the Plaintiff his servants or agents shall be entitled to :-
- (a) have access, at all times and remain and make use of that portion of the Singapore International Airport leading to Shop No. 22 Arrival Hall, Singapore International Airport;
- (b) enter at all times and to remain at No. 22, Arrival Hall, Singapore International Airport;
- (c) do business of exhibiting and selling duty free liquor and tobacco products;
- (d) be issued with Seasonal and Temporary passes for access to Shop No. 22 Arrival Hall, Singapore International Airport.

(iv) possession of the said premises;

20 ~~(iv)~~ (v) damages;

~~(v)~~ (vi) costs;

~~(vi) --- liberty to apply;~~

(vii) such further and other reliefs as the Court shall deem fit.

Dated this 2nd day of May 1975.

Sd. Tan Kim Seng & Co.

Solicitors for the Plaintiff.

Re-dated this 1st day of December, 1977.

Solicitors for the Plaintiff.

30 To: The Attorney-General, Singapore,
Attorney-General's Chambers,
Government Offices,
High Street, SINGAPORE.

In the High Court
of the Republic
of Singapore

No. 6

AMENDED DEFENCE

No. 6

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Amended Defence
10th January 1978

Suit No. 1428)
of 1975)

B E T W E E N : CHIN AH LOY Plaintiff

- and -

Amended in red ink
pursuant to an Order
of Court dated the
22nd day of November,
1977

ATTORNEY-GENERAL,
SINGAPORE

Defendant

10

Dated this 10th day of
January, 1978.

Sd. LOW WEE PING

Asst. Registrar.

AMENDED DEFENCE

1. Save the Agreement dated 2nd August, 1972 (hereinafter referred to as "the Agreement") and the condition in clause 4(i) of the Agreement, the Defendant denies paragraph 1 of the Amended Statement of Claim and says that as provided in clause 1(1), the Agreement was for the term of 3 years from 1st February, 1972, determinable as provided in clause 4(i) therein.

20

2. Clause 4(i) of the Agreement provided that notwithstanding anything therein contained, either party may terminate the tenancy at any time by giving to the other 3 months' previous notice in writing.

3. The Defendant denies paragraphs 2 and 3 of the Amended Statement of Claim and states as follows :-

(a) On or about 28th October, 1971, the Government invited tenders for the tenancy of Shop No. 22 Arrival Hall, Singapore International Airport (hereinafter referred to as "the premises") and other shops at the Airport. The Plaintiff submitted a tender for the premises and the Plaintiff's

30

tender was accepted by the Government by letter dated 11th January, 1975.

In the High Court
of the Republic
of Singapore

—
No. 6

Amended Defence

10th January 1978

continued

- (b) In February, 1972, pending the execution of the Agreement, the Plaintiff took possession of the premises.
- (c) In May, 1972, copies of the Agreement were forwarded to the Plaintiff for his execution.
- (d) The Plaintiff, before signing the Agreement, had requested the Government to reconsider clause 4(i) of the Agreement saying that what he wanted was to have a secured term of 3 years, and asked whether an option to extend the tenancy had been omitted from the Agreement due to an oversight?
- (e) The Plaintiff was advised that the Government was unable to reconsider or exclude clause 4(i), that if he observed the Agreement carefully, his tenancy was not likely to be terminated during the period in question and that the Government would consider extending the Agreement if the Government was satisfied with the services provided and prices charged by the Plaintiff. Thereupon, on or before 2nd August, 1972, the Plaintiff executed the Agreement, and returned the signed copies thereof to the Government, whereupon the Government executed the same on or about 2nd August, 1972.
- (f) The Plaintiff had in fact occupied the premises for 3 years and 3 months when his tenancy was terminated on 30th April, 1975, in accordance with clause 4(i).
- (g) There was no collateral contract as alleged. Even if there was a collateral contract, it did not affect or impair the validity of the Government's notice under clause 4(i) which on 30th April, 1975, duly terminated the Agreement as extended.

4. Save the term in the Agreement mentioned therein, the Defendant denies paragraph 4 of the Amended Statement of Claim.

In the High Court
of the Republic
of Singapore

No. 6

Amended Defence
10th January 1978
continued

5. Save the Plaintiff took possession of the premises and entered into the Agreement, the Defendant denies paragraph 5 of the Amended Statement of Claim.

6. Save by letter to the Government dated 30th October, 1974, the Plaintiff purported to exercise an option to extend the Agreement, the Defendant denies paragraph 6 of the Amended Statement of Claim and states as follows:-

(a) Subsequently by letter dated 18th January, 1975, the Government informed the Plaintiff that he should vacate the premises by 31st January, 1975. 10

(b) By a reply dated 25th January, 1975, the Plaintiff's solicitors complained to the effect that the Plaintiff's purported exercise by letter dated 30th October, 1974, of an option was not confirmed and instead the Plaintiff was required to vacate the premises within two weeks of the Government's letter under reply.

(c) Whereupon the Government by letter dated 31st January, 1975, in effect gave the Plaintiff a further three months within which to vacate the premises. 20

7. Save by letter to the Plaintiff dated 31st January, 1975, the Government extended the Agreement with effect from 1st February, 1975, on the same terms and conditions as the Agreement, and nevertheless gave the Plaintiff '3 months' notice to terminate his tenancy under clause 4(i) of the Agreement as extended, the Defendant denies paragraphs 7, 8 and 9 of the Amended Statement of Claim and says that the said notice was valid and that the tenancy was thereupon duly terminated on 30th April, 1975. 30

8. The Defendant denies paragraphs 10, 11 and 12 of the Amended Statement of Claim and states as follows :-

(a) The premises were located at the Airport's then Arrival Hall.

(b) The said Arrival Hall was at all material times a security area.

(c) Using Airport passes issued by the Airport Police, the Plaintiff and his employees secured entry into the said Arrival Hall.

(d) The Plaintiff carried on business at the premises until about 1 a. m. on 1st May, 1975, when the Plaintiff and/or his representatives, of their own accord, ceased business, closed the shop and left the premises.

10 (e) Subsequently, the Plaintiff informed the Government that he would remove his goods from the premises and return the Airport passes to the Airport Police.

(f) On or about 16th May, 1975, the Plaintiff, of his own accord, removed all his goods from the premises.

In the High Court
of the Republic
of Singapore

No. 6

Amended Defence

10th January 1978

continued

20 9. The Defendant says that the Plaintiff failed to pay the estimated surcharge in breach of clause 4(ii) of the Agreement whereupon the Government by letter dated 5th April, 1975, gave notice to the Plaintiff that by reason of such breach and if he did not vacate the premises on or before 30th April, 1975, the Government would forthwith exercise their right under that clause to re-enter the premises.

30 10. Clause 4(ii) of the Agreement provided, inter alia, that if the estimated surcharge or any part thereof shall be unpaid for 21 days after becoming payable (whether formally demanded or not) it shall be lawful for the Landlord at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord in respect of any antecedent breach of the Tenant's covenants or stipulation therein contained.

11. Clause 1(2)(ii) of the Agreement provided, inter alia, that the estimated surcharge for the whole period of 3 months shall be paid in advance on or before the 15th day of the first month and such estimated surcharge shall be calculated on the monthly average figure of gross sales for the previous 3 months.

40 12. The Defendant says that the estimated surcharge

In the High Court
of the Republic
of Singapore

No. 6

Amended Defence

10th January 1978

continued

for the whole period of the months of February, March and April, 1975 was payable in advance on or before 15th February, 1975; ~~that the Plaintiff failed to pay any such estimated surcharge~~, and that, ~~in any event~~, no estimated surcharge was paid within 21 days from 15th February, 1975.

13. The Defendant says that in pursuance of the alternative notices contained in the said letters dated 31st January, 1975, and 5th April, 1975, the Plaintiff vacated the premises on or about 16th May, 1975, when the Plaintiff removed all his goods from the premises.

10

14. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation of fact contained in the Amended Statement of Claim as if the same were set forth herein and specifically traversed.

WHEREFORE the Defendant denies that the Plaintiff is entitled to any of the reliefs set out under paragraph 12 of the Amended Statement of Claim and prays that the Plaintiff's claim be dismissed with costs.

Dated this 22nd day of May, 1975.

20

Sd. Lee Bian Tian

for Attorney-General.

Re-dated this 10th day of January, 1978.

for ATTORNEY-GENERAL.

To: M/s Tan Kim Seng & Co.

In the High Court
of the Republic
of Singapore

—
No. 7

Amended Reply
4th February 1978
continued

letter dated 30th October 1974 to the Government exercise the option and not, as alleged, purport to exercise the option to extend the tenancy for a further period of three (3) years and that the Government did by letter dated 31st January 1975 accept the Plaintiff's exercise of the option (if such acceptance was necessary, which is not admitted) the Plaintiff denies each and every allegation contained in paragraph 6 of the Amended Defence.

2.4. As to paragraphs 9 to 12 of the Amended Defence, the Plaintiff denies that he was liable to pay surcharge under clause 1(2)(ii) of the Agreement relating to the Plaintiff's tenancy from the 1st of February 1975 on the same terms and conditions as those contained in the Agreement dated the 2nd August, 1972 but contends that he was liable for payment of surcharge under clause 1(2)(i) in respect of the first 3 months of the said tenancy (namely, February, March and April 1975) payable on the 15th day of the month following each of these months. 10

3.5. In pursuance of the provisions of clause 1(2)(i) the Plaintiff made the following payments of surcharges, namely :- 20

<u>Date</u>	<u>Amount</u>	<u>Surcharge For</u>
17.3.75	\$17,181.02	February 1975
11.4.75	\$18,842.27	March 1975
26.4.75	\$ 47.50	March 1975
25.4.75	\$17,176.14	April 1975
2.6.75	\$ 3,341.08	April 1975
	<u>\$56,588.01</u>	

4.6. The Plaintiff denies that he had been in breach of clause 4(ii) as alleged or otherwise. 30

5.7. If, which is denied, the Plaintiff was liable to pay surcharge under clause 1(2)(ii) the Government would still be disentitled to re-enter upon the demised premises since the receipt by the Government of the said sum of \$56,588.01 operated as an acceptance of surcharge payable under clause 1(2)(i) or alternatively as a waiver of the Government's right to surcharge under clause 1(2)(ii) and the Government was thereby precluded from relying on clause 4(ii) to re-enter upon 40

the demised premises and the re-entering by the Government upon the demised premises was unlawful.

6.8. In the further alternative, by accepting payments of the surcharges referred to in paragraph 5 above on the respective dates when the said surcharges were paid and with knowledge that the said payments were made under clause 1(2)(i) the Government represented to the Plaintiff that the Plaintiff was liable to payment of surcharge under clause 1(2)(i) or alternatively that the Government was entitled to surcharge under clause 1(2)(i). Relying on the representation of the Government constituted by the receipt of each payment of surcharge the Plaintiff continued to make payment of surcharge under clause 1(2)(i). In the premises, the Government is estopped from denying that the Plaintiff is liable to pay surcharge under clause 1(2)(i).

7.9. In the further alternative, upon receipt of each payment by the Plaintiff of surcharge made under clause 1(2)(i) the Government never made any claim to surcharge payable under clause 1(2)(ii) and duly acknowledged receipt of each payment made by the Plaintiff under clause 1(2)(i) and by its silence permitted and induced the Plaintiff to pay surcharge under clause 1(2)(i) for the months of February, March and April 1975 or alternatively to believe that the Plaintiff is not liable to pay surcharge under clause 1(2)(ii). The Government is estopped from saying that the Plaintiff was liable at any time to pay surcharge under clause 1(2)(ii).

10. The Plaintiff states that he was locked-out and prevented from entering the demised premises by the Government, their servants or agents on or after the 30th of April 1975 and the allegations in paragraphs 8(d)(e) and (f) and 13 of the Amended Defence are specifically denied.

8.11. In the final alternative, the Plaintiff states that the Government's right to re-entry (if any, which is not admitted), was not enforceable by reason of the failure on the part of the Government to comply with section 18 of the Conveyancing and Law of Property Act (Chapter 268).

In the High Court
of the Republic
of Singapore

—
No. 7

Amended Reply

4th February 1978

continued

In the High Court
of the Republic
of Singapore

No. 7

Amended Reply
4th February 1978
continued

9.12. The Plaintiff denies paragraph 13 and states that he was locked out of and prevented from entering the demised premises by the Government its servants and agents on and after the 30th April 1975.

10.13. In the premises, the Plaintiff claims to be entitled to relief from forfeiture of the Agreement by the Government.

Dated and Delivered this 12th day of June, 1975.

Sgd. Tan Kim Seng & Co.

SOLICITORS FOR THE PLAINTIFF

10

Re-dated and re-delivered this 4th day of
February, 1978.

SOLICITORS FOR THE PLAINTIFF

TO:- The Attorney-General, Singapore,
Attorney-General's Chambers,
Government Offices,
High Street,
SINGAPORE.

Plaintiff's
Evidence

No. 8

Chin Chow Lai
Examination

15th March 1978

No. 8

PLAINTIFF'S EVIDENCE

CHIN CHOW LAI

IN THE HIGH COURT IN SINGAPORE

Suit No. 1428 of 1975

B E T W E E N : CHIN AH LOY Plaintiff

- and -

THE ATTORNEY-GENERAL,
SINGAPORE Defendant

Coram: Choor Singh J.

NOTES OF EVIDENCE

Wednesday, 15th March 1978

20

30

K.S. Chung with Neo
Lee Bian Tian for A.G.

Agreed Bundle tendered, admitted and
marked AB.1 to AB.82E and read in ct.

P.W.1 Chin Chow Lai, affd.

I live at 54 Woo Mon Chew Rd. S'pore.

Food caterer. Self-employed. I do not have a
shop.

10 Pltf. is my brother. I was in partnership with
him in the running of the duty free shop in the old
arrival hall of the S'pore Airport. Although the
tenancy agreement was in his name, I in fact ran the shop.
All negotiations between D.C.A. and my brother and I
were carried out by me. All correspondence was
drafted by me and approved by my brother. All
decisions relating to that business were made by my
brother and myself. The evidence I am going to
give is from my own personal knowledge. But my
brother also knows all matters in connection with this
20 Airport shop.

In 1972 I obtained tender from D.C.A. to tender
for shop No.22. I see A.B.1. I remember this
document. It gives the general information. I see
clause 4. I remember it. The figures on which our
tender was based were worked out by my brother and I.
We based the figures on the amount of capital involved.
We were attracted by clause 4 - the option. We
tendered \$3,000 as rent. This was to be a shop in
the arrival hall on the first floor. This was a new
30 idea of the Govt. There was some uncertainty in
our mind as it was a new idea. We were thinking
of six years- three years with an option to renew for
another three years. The option was a big attraction.
Without this option I would not have submitted a
tender.

I see A.B.8. This is letter sent by my brother.
It accompanied the tender. This letter was drafted
by me and my brother.

I see A.B.9. We received this letter. I see

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 8

Chin Chow Lai
Examination
15th March 1978

continued

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 8

Chin Chow Lai
Examination
15th March 1978
continued

para. 3. I remember this reference to the option.

I see A.B.11. This is my brother's letter to D.C.A. We asked for a monopoly in the arrival hall in the sale of liquor and tobacco.

We received a reply at A.B.14.

On 3.5.72 I received A.B.16.

We wrote to D.C.A. on 24.6.72 after considering terms of the Agreement. It is A.B.17. I remember writing it. We had not signed the Agreement at that date. We received A.B.19 in reply. Having received this letter I signed the Agreement. I have a Power of Attorney from my brother. I signed on behalf of my brother. I signed because I was satisfied on both points that I had raised in my letter A.B.17. Otherwise I would not have signed the tenancy Agreement. I was relying on the assurances given in A.B.19.

10

Before A.B.19 was received, we had expended about \$40,000 in our business. This included three months deposit in advance and money spent on publicity. On publicity alone we spent about \$4,000/-. After receiving A.B.19 and signing the Agreement, I spent another \$30,000 on advertisements and publicity. This was spent from July 1972 to Feb. 1973.

20

I see A.B.29. We exercised our option by this letter.

Two-and-a-half months later I received A.B.33 asking us to get out. Nothing was told to us during those 2½ months. Suddenly on 18.1.75 we were told to get out.

We saw our solicitors. They wrote A.B.34. We received a reply at A.B.36. We were granted our option - extension of the tenancy upon the same terms and conditions. We were also given three months notice under clause 4(1) of the Agreement.

30

I remember S.I.A. Emporium. They started business on 7.2.75 on the first floor at the arrival hall. I produced this sketch made by me (P.1). The portion marked "A" is our shop. Portion "B" is the S.I.A.

Emporium. They were selling duty free liquors, tobacco and perfumes.

We were selling duty free liquor and tobacco.

I see this Brochure. It was handed out on 1.2.75.

10 The duty-free S.I.A. Emporium was incorporated some time in 1974. In Dec. 1974 one Mr. Jeffrey Ong from the S.I.A. Emporium contacted me to enquire whether I would want to sell to them my counter, equipment and stock. He told me that my lease would expire on 31.1.75; that the S.I.A. Emporium would be setting up shop at my site and that if I sold them my counter and equipment, they could start business straightaway on 1.2.75. I told him that I could not sell him what he wanted.

I asked my solicitors to reply to A.B.36. They wrote A.B.37 and A.B.38.

20 The complaint by me in A.B.38 was never denied by D.C.A.

In A.B.40 my solicitors made another complaint. There was no reply but they rectified by removing the obstruction.

30 On 30.4.75 we moved out. On that day the Airport Manager and his assistant, two customs officers and the O.C. of the Airport police came to our counter at 10 p.m. and they informed us that we were to quit at midnight and also to surrender our Airport passes to the police. They remained there till midnight when we closed our business. We removed our stock to our bonded store under the supervision of the Customs Dept. man. We also surrendered our passes to the police. That was the end of our business.

I produce my income tax returns for the years 1974, 1975 and 1976. (Bundle marked Ex. P.3).

Our net profit for the year ended 28.2.73 was \$7,539.50 as shown on page 5.

Our net profit for the next year was \$177,478.95

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 8

Chin Chow Lai
Examination
15th March 1978

continued

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 8

Chin Chow Lai
Examination
15th March 1978
continued

Cross-
examination
15th March 1978

as shown on page 10.

Our net profit for the next year was \$384,050.08
as shown on page 16.

I produce Year Book of Statistics S'pore 1976/77
(P.4). Page 123 shows arrivals by air for the years
1972 to 1976. There was an air passenger increase
of 13 per cent in the arrivals every year from 1973 to
1976.

Xxd. by Lee

Q. The tender documents are made up of A.B.1 to A.B.7? 10

A. Yes.

Q. You were aware that if successful you would be entering a tenancy Agreement?

A. Yes.

Q. And subsequently you did sign a tenancy Agreement?

A. Yes. After many months.

Q. The tenancy Agreement was a standard Agreement of the D.C.A.?

A. I don't know.

Q. Did you ever ask for a copy of the tenancy Agreement? 20

A. No.

Q. You occupied the shop on 1.2.72 before signing the tenancy Agreement?

A. Yes.

No re-exam.

By me
Sgd. CHOOR SINGH

No. 9

PLAINTIFF'S EVIDENCE

CHIN AH LOY

Thursday, 16th March 1978

Hearing resumed

Parties and counsel as before

Chung tenders monthly digest (marked P. 5).
Refers to pg. 60 of Ex. P. 5.
Says it is continuation of Ex. P. 4.

10 P.W.2 Chin Ah Loy, affd.

I live at 1502 Killiney Apartments, Killiney Rd.
S'pore.

Graphic Designer.

I am the pltf. in this Suit.

20 Ex. A. B. 20 is in my name. It was signed by my
brother on my behalf under a P/Attorney from me. I
operated the duty free shop at the old arrival hall at
the Airport in partnership with my brother P.W.1. He
did all the negotiations. He attended to all the corres-
pondence. I was aware at all times of the negotiations
between him and the D.C.A. All decisions regarding
the tender and the signing of the contract were made by
me and my brother jointly. I knew about the option
contained in the tender conditions. Without the option
we would not have tendered.

I see A. B. 17. It is a letter from Chin Inter-
national, the name of our partnership. It is signed by
my brother. He brought up the matter. I knew all
about this letter.

30 I see A. B. 19. It is a letter from the Director of
Civil Aviation addressed to my brother, the managing
partner of our firm. But for this letter we would not
have entered into the tenancy Agreement. We had
expended something like \$40,000 before receipt of this

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 9

Chin Ah Loy
Examination
16th March 1978

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 9

Chin Ah Loy
Examination
16th March 1978

continued

letter. Without the assurances in A.B.19, we would have pulled out. If we had pulled out we would have recovered \$9,000 from D.C.A. being three months rent deposit. I see Ex. P.3. In 1973 our firm made a net profit of \$7,539.50. I produce the computation of the Comptroller of Income Tax (Ex. P.6). He assessed us on a profit of \$39,742/-. I produce computation for the period ending 28.2.74 (P.7). Page 10 of Ex. P.3 shows our trading a/c for year ending 28.2.74. Net profit was \$177,478.95. The adjusted profit finally came to \$217,859.00. We were assessed on this figure.

10

I see page 16 of Ex. P.3. Our net profit for year ending Feb. 1975 was \$384,050.08. We have not received a computation from the Comptroller yet.

I produce figures on which I estimate our profits for the years 1.3.75 to 28.2.78 (Ex. P.8).

Our profit for the year 1974/75 was 12% of audited sales. Based on 12% profits - 10% growth I have projected figures for the 4th year, 5th year and 6th year.

I produce certified copies of Annual Returns of S'pore Airport Duty Free Emporium (Pte) Ltd. (Ex. P.9).

20

On page 4 are names of Directors.

On page 6 are names of Shareholders.

On page 13 is the operating profit for the period 25.10.74 to 31.3.76. This emporium operates three duty free shops, one in the arrival hall, one in the departure hall and the third in the transit hall.

I produce certified copies of the Emporium's Return for the year ending 31st March 1977. I see page 15. Their profit for the year ending 31.3.77 was \$5,746,058.

30

Cross-
examination
16th March 1978

Xxd. by Lee

- Q. The tender document - A.B.8 - is by you?
A. Yes.
Q. Now, see A.B.9?
A. Yes.

Q. That is the letter of acceptance addressed to you?
A. Yes.

Q. See A.B.11?
A. Yes.

Q. It is written by you and not your brother?
A. Yes. I conferred with my brother and wrote it.

Q. All letters were from you and to you?
A. Yes.

10 Q. The tenancy agreement is with you and not your
brother?
A. Yes.

Q. See A.B.19?
A. Yes.

Q. Is it not quite clear that the Dept could not re-
consider clause 4(1)?
A. According to the letter, yes.

20 Q. When you signed the tenancy agreement, you
accepted clause 4(1)?
A. No. There was correspondence pertaining to this
clause.

Q. No correspondence after A.B.19?
A. Yes. My brother and I understood from A.B.19
and because of our understanding, we agreed to
sign the tenancy agreement.

Q. Now, look at the assurance in A.B.19. This
assurance relates to a period of three years and not
clause 4(1)?

A. Is not clause 4(1) related to the same period?

30 Q. This letter does not assure you of any security after
three years?

A. We were talking of a period of six years.

Q. Look at A.B.17?
A. Yes.

Q. You have not mentioned six years here?
A. No. We may not exercise our option after three years.

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 9

Chin Ah Loy
Cross-
examination
16th March 1978
continued

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 9

Chin Ah Loy
Cross-
examination
16th March 1978

continued

Q. See A.B. 29?

A. Yes.

Q. In para. 5 you refer to "application"?

A. It is just a choice of words.

Q. In A.B. 36 you were given three months notice?

A. Yes, as well as extension of our tenancy for
another three years.

Q. You were the sleeping partner?

A. You can say that.

Q. Were you employed elsewhere?

A. Yes. I was at the beginning. I was self-
employed as a design consultant.

10

Q. Have a look at P. 8?

A. Yes.

Q. Don't you agree that these figures are highly
inflated?

A. I would stress, they are the lowest possible
figures.

Q. What was the total profit you made during the
three years?

A. That figure can be obtained by totalling the
figures for three years.

20

Q. It is about half a million?

A. Yes. Over half a million.

Q. How much more are the income tax adjustments?

A. Roughly about \$150,000 more.

Q. The estimated profit here is for three years and
not two years and nine months?

A. Yes.

Q. You have not taken account of the S.I.A. Emporium
operations?

A. Our figures are based on our own operations.

30

Q. You have not taken into account competition posed
by the S.I.A. Emporium?

A. No.

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 9

Chin Ah Loy
Cross-
examination
16th March 1978

continued

Q. Do you know that after the S.I.A. Emporium opened, the prices of duty-free goods went down?

A. I don't know.

Q. Your figures have not taken that into consideration?

A. No.

Q. The S.I.A. Emporium in front of your shop was a stronger competitor?

10 A. They were obstructing us - from that point of view - yes - they were blocking us.

Q. During the three months of the notice period - as a result of the Emporium's competition - your sales went down by half?

A. That is not true.

Q. To what extent, did your figures drop? Sales drop?

A. I don't know exactly.

Q. Look at P. 9?

20 A. Yes.

Q. P. 9 is again not a reliable guide?

A. It is reliable.

Q. The figures in P. 9 relate to three shops?

A. That is true.

Q. Sales in departure hall shops are always better than the sales in the arrival hall shop?

A. I can't say for sure.

Q. Your shop only sold duty-free liquor and tobacco?

A. Yes.

30 Q. Do you know that the S.I.A. Emporium shop sold all kinds of duty-free as well as dutiable goods?

A. I am not sure.

Q. For example, they sold perfume, malt liquor, souvenir e.g. gold orchids, lighters, advertisement space, etc.?

A. I am not sure.

In the High Court
of the Republic
of Singapore

Plaintiff's
Evidence

No. 9

Chin Ah Loy
Cross-
examination
16th March 1978
continued

Q. Do you know that the S.I.A. Duty-Free Emporium
spent far more in advertisement?

A. Yes.

Q. So, you agree that Ex. P.9 does not show the
profit you could have made?

A. I am tempted to say that we would have made just
as much as the Emporium.

Q. You have also not allowed for income tax?

A. Yes.

Re-exam. - nil.

10

By me

Sgd. CHOOR SINGH

Defendant's
Evidence

No.10

No.10

DEFENDANT'S EVIDENCE

PATRICK GOH HONG WAN

Patrick Goh Hong
Wan
Examination
16th March 1978

D.W.1 Patrick Goh Hong Wan, s/s.

I live at 123 Jalan Pelikat, S'pore 19.

Company Director.

I was Airport Manager of S'pore Airport at Paya
Lebar from April 1971 to end of Dec. 1972. I see
A.B.1. It is part of a tender document. Tender
document is A.B.1 to A.B.7. A.B.8 is the tender I
received. It is letter accompanying the tender docu-
ment.

20

I see A.B.9. It is letter of acceptance.

Subsequently I sent pltf. A.B.16. I see A.B.17.
I received this letter. Mr. Chin was asking for more
secure terms. I gave a qualified assurance at best
and not an absolute guarantee. We had a standard
tenancy agreement for all shops and he was sent one of
those. My interpretation was that if everything went
on fine, and there was no breach of any part of the
contract, the D.C.A. might grant the option to renew

30

the agreement. My interpretation is that the D.C.A. decides whether to grant the option or not.

I see A.B.19. It is my reply to Mr. Chin's letter. After that, the tenancy agreement was signed.

Xxd. - nil.

By me

Sgd. CHOOR SINGH

No. 11

SUMMING UP BY COUNSEL FOR DEFENDANT

10 Lee:

Defd.'s case turns on clause 4(1) of the Agreement.

Issue is whether the Govt. was entitled to terminate the tenancy by invoking clause 4(1).

Pltf. relies on A.B.19 which is in reply to A.B.17.

At the highest, A.B.19 gave assurance of a secure term of three years.

No such assurance re second term of three years.

Clause 4(1) was not removed as a result of Pltf.'s representation.

20 Govt. insisted on its inclusion.

By A.B.36 Govt. extended the tenancy for another term of three years "on the same terms and conditions" i.e. including clause 4(1).

This clause 4(1) is an overriding condition. It is conceded that during the first term of three years, the Govt. could not have invoked 4(1) because of the assurance given in A.B.19. It would have been morally and legally wrong to do it.

In the High Court
of the Republic
of Singapore

Defendant's
Evidence

No. 10

Patrick Goh Hong
Wan
Examination
16th March 1978

continued

No. 11

Summing-up by
Counsel for
Defendant
(Lee Bian Tian)
16th March 1978

In the High Court
of the Republic
of Singapore

—
No. 11

Summing-up by
Counsel for
Defendant
(Lee Bian Tian)
16th March 1978
continued

But the Govt. were not prevented from invoking 4(1) in respect of the second term.

There was no collateral contract. There was no consideration. There was no estoppel as alleged.

No representation of fact.

No representation related to intention or expectation.

No estoppel because at the time the alleged representation was made, clause 4(1) was not effective as the tenancy agreement had not been signed.

As regards quantum of damages, the measure should be the amount suffered by the Pltf. personally i. e. excluding the loss suffered by his brother.

10

Pltf. was the tenant, alone.

Brother is a stranger to the Agreement.

No privity of contract.

Pltf. cannot say what loss he suffered beyond what he himself has incurred.

Ex. P. 6 and P. 7 show his income - i. e. Pltf. 's share of the profits.

No figures are supplied by the Pltf. for the year after that.

20

If damages are to be the loss suffered by the firm, the figures in Ex. P. 8 are grossly inflated.

Many discounting factors have not been taken into consideration e. g. income tax.

There was a strong competitor in S'pore Airport Duty-Free Emporium (Pte) Ltd.

Pltf. entitled to damages for only two years nine months.

P. 5 does not take into account that prices of duty-free goods were reduced in 1975.

30

In any event 12% profit is too high.

No reliance can be placed on P. 9 because the S'pore Airport Duty-Free Emporium runs three shops and they sell so many other kinds of goods. Their operations are on a much larger scale.

Pltf. should have called for the accounts of the S'pore Airport Duty-Free Emporium shop in the arrival hall. This has not been done. The burden of proof is on the Pltf. to establish the loss he has suffered.

10

This he has not done.

Intld. C.S.

- Adj. to 18.3.78 at 10.30 a.m. -

No. 12

SUMMING UP BY COUNSEL FOR PLAINTIFFS

Friday, 17th March 1978

Hearing resumed.
Parties and counsel as before.

Chung:

20 Clear from all documents that express agreement consisted and is contained in all the documents but not in para. 1 of S/Claim.

Collateral warranty -
Anson on Contracts, pg.127
Cheshire & Fifoot on Contracts, pg. 59, 60.

Option was properly exercised.

They confirmed it "on same terms and conditions".

Validity of notice - A.B.36.

Notice was bad.

30 See Lower v. Sorrell, (1962) 3 All E.R.1074 at 1083, last para.

In the High Court
of the Republic
of Singapore

No.11

Summing-up by
Counsel for
Defendant
(Lee Bian Tian)
16th March 1978

continued

No.12

Summing-up by
Counsel for
Plaintiffs
(K.S. Chung)
17th March 1978

In the High Court
of the Republic
of Singapore

No. 12

Summing-up by
Counsel for
Plaintiffs
(K.S. Chung)
17th March 1978

continued

Question of surcharge has been abandoned by m.l.f.

Claim for loss suffered by Pltf. as lessee.

How he apports the damages with his partner is irrelevant.

Ct. cannot be asked to apportion these damages.

Pltf. is lessee. What is he entitled to for wrongful termination?

To consider anything further would be too remote.

Our estimate of damages is at Ex. P. 8.

We have proved 13% growth in arrivals. But we claim only 10%. 10

We claim 12% profit. Actual figure based on 1974/75 figure is 12.8% profit.

Intld. C.S.

Oral judgment delivered.

Judgment for the Pltf. in the sum of \$604,890/- and costs as taxed.

No. 13

Oral Judgment
17th March 1978

No. 13

ORAL JUDGMENT

IN THE HIGH COURT IN SINGAPORE 20

Suit No. 1428 of 1975

B E T W E E N : CHIN AH LOY Plaintiff

- and -

ATTORNEY-GENERAL,
SINGAPORE Defendant

Coram: Choor Singh J.

ORAL JUDGMENT

I find for the plaintiff. The evidence clearly shows that the Government of Singapore committed a breach of the tenancy agreement when they terminated 30

the plaintiff's tenancy of the shop in question. I accept the plaintiff's evidence that if not for the assurance given by the Director of Civil Aviation in his letter of the 27th June 1975, that so long as the plaintiff carefully observed the rules and regulations of the tenancy agreement he could consider his tenancy as secure for the period in question, he would not have entered into the said agreement. 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. The effect of this assurance was that the Government of Singapore could invoke clause 4(i) of the agreement only when the plaintiff had committed some breach of the tenancy agreement.

In the High Court
of the Republic
of Singapore

—
No. 13

Oral Judgment
17th March 1978

continued

The Government, having accepted the plaintiff's exercise of his option, the tenancy agreement was renewed and was in force for a further period of three years as from 1st February 1975 but on the 31st January 1975 the Government purported to terminate the tenancy by invoking clause 4(i) and giving the plaintiff three months notice. The tenancy was renewed with effect from 1st February 1975 on the same 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. 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 second term had not yet commenced. It commenced on 1st February 1975, but the notice to terminate the second term was given on 31st January 1975. The Government had no valid grounds at all to terminate the second term and dispossess the plaintiff. In my judgment, on the factual evidence in this case, which is not in dispute, the plaintiff is entitled to damages for the loss suffered by him for not being allowed to operate his shop for a period of 2 years and 9 months.

It is submitted that the plaintiff can only recover his personal loss and that as the shop operated by him was a partnership business he could not recover the loss suffered by his brother the other partner. I am

In the High Court
of the Republic
of Singapore

—
No. 13

Oral Judgment
17th March 1978

continued

unable to accept this submission. The plaintiff is the party to the tenancy agreement. This claim is brought by him as the lessee. What arrangement he had in regard to the sharing of the profits with his brother to help him to operate the shop is irrelevant on the question of liability.

The real difficulty in this case is the assessment of damages for the loss suffered by the plaintiff. If the plaintiff had continued to operate his shop for the period in respect of which he is entitled to damages, he would have had competition from the other shop set up by the Singapore Airport Duty-Free Emporium (Pte.) Ltd. (hereinafter referred to as the "Emporium"). The Emporium shop was situated right in front of the plaintiff's shop. Passengers arriving at the arrival hall and going through the immigration check point would first reach the Emporium shop. It is submitted that the bulk of the business would have gone to the Emporium shop. I do not think this is very correct. The number of passengers arriving in modern planes is very large and passengers are always in a hurry to leave the airport as soon as possible. If a plane load of 100 passengers goes through the check point I cannot imagine all of them queuing up to be dealt with at the Emporium shop. In my opinion they would all scramble for early attention at both shops which were adjacent to each other. Both the shops were so close to each other that a passenger may think both were part of the same establishment. In my judgment the business would have been more or less equally distributed between the plaintiff's shop and the Emporium shop. Unfortunately the sales figures of the Emporium shop for the relevant period of two years and nine months have not been put before the court by either party. Further, it is alleged that the Emporium shop sold dutiable as well as duty-free goods and that it also sold goods which the plaintiff was not permitted to sell in his shop. I have therefore to fall back on the sales figures of the plaintiff's shop during his first term of three years. The plaintiff has put up in Exhibit P. 8 projected figures of sales from 1st March 1975 to 28th February 1978. He has added a 10 per cent growth rate for each year and he claims a 12 per cent net profit on the gross sales. I accept this 10 per cent growth rate and 12 per cent net profit but for the first year of the second term he is only entitled to

profits for nine months. Therefore the figure for the first year of the second term must be reduced by one-fourth. After reduction it comes to \$296,514. The total profits calculated on this basis therefore amount to \$1,209,781. In my opinion half of these profits would have gone to the Emporium shop. The plaintiff is therefore entitled to \$604,890. There will be judgment for \$604,890 and costs as taxed.

In the High Court
of the Republic
of Singapore

No.13

Oral Judgment
17th March 1978

continued

10 Taken down by me and seen by the Honourable
Mr. Justice Choor Singh

KOH BEE KIAT

17th March 1978. Private Secretary to
Choor Singh J.

No.14

No.14

FORMAL JUDGMENT

Formal Judgment
17th March 1978

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1428)
of 1975)

B E T W E E N : CHIN AH LOY Plaintiff

20

- and -

ATTORNEY-GENERAL,
SINGAPORE Defendant

JUDGMENT

The 17th day of March, 1978

THIS ACTION Having on the 15th, 16th and 17th days of March, 1978 been tried before the Honourable Mr. Justice Choor Singh and the Court after hearing Counsel for the Plaintiff and the State Counsel for the Attorney-General.

30

IT IS THIS DAY ADJUDGED that the Defendant do pay the Plaintiff damages in the sum of \$604,890.00 And Costs of the Action as taxed.

ASST. REGISTRAR

Entered this 18th day of April, 1978
in Volume 189 Page 152 at 2.50 p. m.

In the Court of
Appeal in
Singapore

No. 15

NOTICE OF APPEAL

No. 15

IN THE COURT OF APPEAL IN SINGAPORE

Notice of Appeal
17th April 1978

Civil Appeal)
No. 25 of 1978)

BETWEEN : ATTORNEY-GENERAL,
SINGAPORE Appellant

- and -

CHIN AH LOY Respondent

In the Matter of Suit No. 1428 of 1975

10

BETWEEN : CHIN AH LOY Plaintiff

- and -

ATTORNEY-GENERAL,
SINGAPORE Defendant

NOTICE OF APPEAL TO COURT OF APPEAL

TAKE NOTICE that the Attorney-General,
Singapore, the abovenamed Appellant being dissatisfied
with the decision of the Honourable Mr. Justice Choor
Singh given at Singapore on the 17th day of March, 1978
appeals to the Court of Appeal against the whole of the
said decision.

20

Dated the 17th day of April, 1978.

Sd: Illegible
for ATTORNEY-GENERAL
SINGAPORE

To: The Registrar, Supreme Court
Singapore

and

To: M/s. Tan Kim Seng & Co. of
6-A Telok Ayer Street,
1st Floor
Singapore 1

30

Solicitor for the abovenamed
Plaintiff/Respondent.

The address for service of the Appellant is the
Attorney-General's Chambers, High Street, Singapore.

In the Court of
Appeal in
Singapore

No. 16

Petition of Appeal
18th May 1978

continued

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.

- (ii) The learned trial Judge erred in law in holding that the said letter of 27 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. 10
- (iii) The learned trial Judge erred in law in holding that, on the exercise of the option by the Plaintiff for a second three-year tenancy, the assurance, which is denied, given in the said letter of 27 June 1972, also applied to the second three-year term.
- (iv) In computing the amount of damages payable to the Plaintiff by the Defendant, the learned trial Judge erred in the following respects:- 20
- (a) by not confining the damages payable only to the losses suffered by the Plaintiff and instead included in the sum awarded the losses suffered by a third party, one Chin Chow Lai; and
- (b) by failing to deduct an appropriate amount to take into account the tax liability of the Plaintiff.
4. Your petitioner prays that such judgment may be reversed and such other orders made herein as the Honourable Court may deem fit. 30

Dated the 18th day of May, 1978.

for ATTORNEY-GENERAL
SINGAPORE
(APPELLANT)

In the Court of
Appeal in
Singapore

No.17

JUDGMENT

No.17
Judgment
24th November
1978

IN THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE

CIVIL APPEAL NO. 25 OF 1978

B E T W E E N : ATTORNEY-GENERAL Appellant

- and -

CHIN AH LOY Respondent

(In the Matter of Suit No. 1428 of 1975)

BETWEEN : CHIN AH LOY Plaintiff 10

- and -

ATTORNEY-GENERAL Defendant)

Coram: Wee Chong Jin, C.J.
T. Kulasekaram, J.
D.C. D'Cotta, J.

JUDGMENT

On 28th October 1971 the Government of Singapore invited tenders for three shops at the Singapore Airport, one of which is described in the tender invitation as "Airport Shop, No. 22 - 1st Floor Arrival Hall (see Sketch B)". Paragraph 4 of the tender invitation states :- 20

"4. The above shops will operate for an initial period of 3 years with the option of a further extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the service provided and prices charged".

The tender of Chin Ah Loy (hereinafter referred to as "the respondent") in respect of Airport Shop No. 22, was accepted on 11th January 1972 by a letter from the then Director of Civil Aviation. In that letter it is stated :- 30

"3. Your tenancy will commence on the 1st January 1972 for a period of 3 years with an option for extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the services provided and prices charged. ...

In the Court of
Appeal in
Singapore

No. 17

Judgment
24th November
1978

continued

6. Would you please let me have your written confirmation by the 20th January 1972 that you accept appointment as the operator and that you will operate the duty free shop for 3 years effective from 1st February 1972".

10

By a letter dated 19th January 1972 the respondent confirmed his acceptance of the offer according to the terms and conditions set out in the Director of Civil Aviation's letter of the 11th January 1972 subject to two exceptions, one of which was that the tenancy should commence on the 18th February 1972. This request was rejected and it would appear that the respondent entered into possession of the shop and that the tenancy commenced on the 1st February 1972.

20

On 3rd May 1972 the Director of Civil Aviation wrote to the respondent forwarding the tenancy agreement for signature and return. The tenancy agreement (which was subsequently executed and dated 2nd August 1972) demised the shop to the respondent "for the term of 3 years from the 1st day of February 1972 determinable as hereinafter provided". Clause 4 of the tenancy agreement reads as follows :-

"4. Provided always and it is hereby agreed as follows :-

30

(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".

On 24th June 1972 the respondent replied as follows :-

"The Director of Civil Aviation,
Singapore Airport,
Singapore, 19.

Attn: Mr. Goh Hong Wan

In the Court of
Appeal in
Singapore

No. 17

Judgment
24th November
1978

continued

Dear Sir,

Re: Tenancy Agreement

Reference your letter dated 3.5.1972 enclosing the tenancy agreement for signature, we have to invite your attention to the following observations :

- (1) Clause 4(i) of the tenancy agreement: The effect of the clause is that we will only have a three months tenancy agreement although on the face of it, it is stated three years. With such a clause, we will not have the confidence to lavish money in promoting this business to our mutual benefits, and beautifying our shop, the object being to turn it into an airport show piece. We have the apprehension that we will not be able to enjoy a secured term of 3 years, and that others may reap the fruit of our labour. 10

On this clause, we hope you would reconsider it. What we want is to have a secured term of 3 years provided we have not committed any serious breach of the tenancy agreement. If necessary, we should like to have an appointment with Mr. Ngiam Dong Dow whom the undersigned knows personally whilst he was with the Federal Chemical Industries (S) Pte. Ltd. 20

- (2) In your letter DCA/1/72 dated 11.1.72, you have given us an option for extension of 3 years subject to certain conditions at the expiry of the present term. We do not, however, find this in the tenancy agreement. Would it be an oversight? Please advise. 30

We regret that we take up the above matters with you now because of the undersigned's hospitalisation for a considerable period of time.

Yours sincerely,
CHIN INTERNATIONAL 40
(Sd): (C.L. CHIN)
Managing Partner".

The Director of Civil Aviation replied to the respondent's letter of 24th June by letter dated 27th June 1972 as follows :-

"Mr. C.L. Chin
Managing Partner
Chin International
20, Hooper Road
Singapore, 9.

In the Court of
Appeal in
Singapore

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Judgment
24th November
1978

continued

Dear Sir,

10

Re: Tenancy Agreement

Your minute of the 24th instant refers.

We regret to advise that we are unable to reconsider Clause 4(i) of the Tenancy Agreement. Please note that this Clause is a standard one applicable and inserted into all our Agreements. 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.

20

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 a part of your Tenancy Agreement with us.

We regret to hear of your hospitalisation and would advise that you sign the Agreement without any further delay. Please note that you should not stamp the Agreement as advised. After the Perm. Secretary has signed the Agreement, it will be forwarded back to you for stamping.

30

We hope to hear from you soonest possible.

Yours faithfully,
Sd:
(Goh Hong Wan)
Airport Manager (PL)
f. Director of Civil Aviation
Singapore".

In the Court of
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Singapore

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continued

By a letter dated 30th October 1974 to the Director of Civil Aviation the respondent wrote, inter alia, as follows :-

"We would now like to exercise and we do hereby exercise the option you gave to us in paragraph 3 of your letter dated 11th January, 1972 and we look forward to your early confirmation of the extension of the tenancy for a further term of three years".

In reply to the respondent's letter the Ag. Permanent Secretary, Ministry of Communications, wrote on 31st January 1975. The material provisions of this letter read as follows :-

10

"With reference to your letter of 30 Oct. 74 addressed to the Director of Civil Aviation and your exercise of the option to renew our Tenancy Agreement dated 2 August 1972, we confirm that the Government has granted you an extension of the said Tenancy Agreement with effect from 1 February 1975 on the same terms and conditions of the said Tenancy Agreement. Nevertheless we hereby give you 3 months' notice under Clause 4(i) of the said Tenancy Agreement as extended hereunder to terminate your Tenancy thereunder.

20

... ..

3. Please note that this notice expires on 30 April 1975".

As from 1st May 1975 the respondent was denied access to the demised shop and eventually dispossessed. He claimed damages for breach of the tenancy agreement and for wrongful dispossession. The High Court gave judgment for the respondent and awarded him damages in the sum of \$604,890.00 and costs. In his oral judgment Choor Singh, J. said :-

30

"I find for the plaintiff. The evidence clearly shows that the Government of Singapore committed a breach of the tenancy agreement when they terminated the plaintiff's tenancy of the shop in question. I accept the plaintiff's evidence that if not for the assurance given by

40

the Director of Civil Aviation in his letter of the 27th June 1972, that so long as the plaintiff carefully observed the rules and regulations of the tenancy agreement he could consider his tenancy as secure for the period in question, he would not have entered into the said agreement. 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. The effect of this assurance was that the Government of Singapore could invoke clause 4(i) of the agreement only when the plaintiff had committed some breach of the tenancy agreement.

In the Court of
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Singapore

—
No. 17

Judgment
24th November
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continued

The Government, having accepted the plaintiff's exercise of his option, the tenancy agreement was renewed and was in force for a further period of three years as from 1st February 1975 but on the 31st January 1975 the Government purported to terminate the tenancy by invoking clause 4(i) and giving the plaintiff three months notice. The tenancy was renewed with effect from 1st February 1975 on the same 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. 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 second term had not yet commenced. It commenced on 1st February 1975, but the notice to terminate the second term was given on 31st January 1975. The Government had no valid grounds at all to terminate the second term and dispossess the plaintiff".

The Attorney-General as the defendant in the action now appeals. He contends that the trial judge erred in holding that the assurance given by the Director of Civil Aviation in his letter of 27th June 1972 applied

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continued

to the second three-year term. The submission is that this assurance clearly relates to the initial three-year term of the tenancy created under the tenancy agreement between the parties and that this assurance does not apply to the second three-year term which commenced on 1st February 1975. We agree with this submission. In our opinion it is plain beyond doubt, from the respondent's letter of 24th June 1972, that the phrase "period in question" in the Director of Civil Aviation's 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. 10

It is also, in our opinion, plain that this assurance is not a term of the tenancy agreement which displaces the provisions of Clause 4(i) but is a collateral warranty which is no longer binding on the Government after the expiry of the initial three-year term of the tenancy. It is clear from the correspondence prior to the signing of the tenancy agreement that the appellant was seeking to have, in his own words, "a secured term of 3 years" and that he obtained from the Director of Civil Aviation a binding promise that his "tenancy may be considered as secure for the period in question" only. 20

The only other question to be decided in this appeal is whether or not the notice to quit contained in the Permanent Secretary's letter of 31st January 1975 was effective to terminate the tenancy on 30th April 1975. It is common ground that the tenancy under the tenancy agreement dated the 2nd August 1972 was for a term of three years "with an option for extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the services provided and prices charged". The appellant exercised this option by his letter of 30th October 1974. 30

In the first place, the 1972 tenancy agreement into which must be incorporated the option clause as set out in paragraph 3 of the Director of Civil Aviation's letter of 11th January 1972 is a clear agreement for the initial three-year term of the tenancy to be extended by three years at the option of the tenant. That being the bargain which the parties have clearly reached it would, in our opinion, upon the exercise of the option, be reasonable to construe the effect of that bargain to be that the tenancy was extended from a term of three 40

years to a term of six years and that no new tenancy was created. If this is the legal position then it follows, in our opinion, that the notice to quit which terminated the tenancy on the 30th April 1975 is a valid and effective notice to quit.

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continued

10 If we are wrong, and upon the exercise by the respondent tenant of his option by his letter of 30th October 1974 a new tenancy would commence from 1st February 1975, the question is whether the notice to quit given on 31st January 1975 before the commencement of the new tenancy is a valid and effective notice terminating the new tenancy on 30th April 1975.

20 The case of *Lower v. Sorrell* (1963) 1 Q.B. 959 was referred to us on this point. In that case a tenancy under a 1943 agreement in writing for a term of five years had become a tenancy from year to year. By a notice to quit the landlord had limited the duration of that tenancy to the period ending 29th September 1960. On 27th September 1960 the landlord's solicitors sent to the tenant another notice to quit timed to expire on 29th September 1961. They were offering to permit the tenant to remain in occupation for another year, from 29th September 1960 to 29th September 1961, on the same terms as before except that the duration was limited to one year. The tenant accepted that offer and remained in occupation with the consent of the landlord and paid the rent up to 29th September 1961. The tenant refused to quit after 29th September 1961 and the landlord sued for possession. The county court judge found that there was a new agreement for the tenant to remain in possession until the expiry of the notice to quit dated 27th September 1960 which he found was served on 28th September 1960. On appeal to the Court of Appeal, all the members of the court held that the tenancy created by the new agreement was a new tenancy for the period 29th September 1960 to 29th September 1961 and was a tenancy for a fixed period of one year only. They further held that as it was a contract for a fixed period of one year only, it was therefore for an interest less than a tenancy from year to year and in those circumstances the tenancy under the new agreement would take effect under Section 2(1) of the Agricultural Holdings Act 1948 as a tenancy from year to year.

30

40

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continued

Mr. Blundell, on behalf of the landlord, argued that even if the new tenancy took effect as a tenancy from year to year, the tenancy had been duly determined by 29th September 1961 as a notice to quit was given in terms of the tenancy, although that notice was given just before the tenancy commenced. Ormerod L.J. dealt with Mr. Blundell's argument as follows :-

"Mr. Blundell argues that even if that be so the tenancy has still been determined by September 29, 1961, as a notice was given in accordance with the terms of the tenancy, although that notice was given just before the tenancy commenced. He argued that the giving of a notice to terminate a tenancy which had not commenced was no bar to the notice, and that in those circumstances a tenancy from year to year could be determined by such a notice and could therefore be a tenancy for one year only. Mr. Blundell agreed that neither his industry nor that of other counsel concerned in the case had been able to discover an authority dealing with this question, and for my part I know of none and should find it difficult to hold that a notice given before a tenancy began in these circumstances was valid". (at page 968).

10

20

Donovan L.J. dealt with Mr. Blundell's argument as follows :-

"Alternatively, he claims that the third notice to quit, which the county court judge found was received on September 28, 1960, effectively determined the new tenancy even as enlarged by section 2 of the Act of 1948.

30

In my opinion, however, a notice to quit is a notice given by an existing landlord to an existing tenant, and, if that view be right, it follows that a person cannot give a valid notice to quit before he has become a landlord and the recipient of the notice his tenant, or before legal relations exist between them which otherwise permit such a notice.

40

In this connection it may be observed that section 23 of the Act of 1948 invalidates any

In the Court of
Appeal in
Singapore

—
No. 17

Judgment
24th November
1978

continued

10 notice to quit which purports to terminate a
tenancy before the expiration of 12 months
from the end of the then current year of
tenancy. Mr. Blundell pointed out that the
third notice to quit was not given during the
currency of the tenancy now in question, and
that accordingly the section does not apply.
That may well be true, but nevertheless the
wording of the section is of value on the
present point, for it clearly proceeds on the
assumption that a notice to quit is a notice
which is given by an existing landlord to an
existing tenant. As I say, I think this is
the right view". (at page 975).

Pearson L.J. dealt with Mr. Blundell's argu-
ment as follows :-

20 "The third notice to quit given on September
27, 1960, cannot operate to terminate the
statutory tenancy from year to year from
September 29, 1960, because it is to be
implied from section 23(1) of the Act that a
notice to quit for terminating such a tenancy
must be given in a year of the tenancy, where-
as the third notice to quit was given before
this tenancy began".

30 During the hearing of the appeal both parties
relied on *Lower v. Sorrell*. Mr. Chao, on behalf
of the appellant, relied on the passage in the judgment
of Donovan L.J. which stated that a person cannot
give a valid notice to quit before legal relations exist
between him and the recipient of the notice which
otherwise permit such a notice. Mr. Chung, on
behalf of the respondent, relied on the passage in the
judgment of Ormerod L.J. which stated that he would
find it difficult to hold that a notice to quit given before
a tenancy had commenced was valid. Mr. Chao also
referred us to the case of *Sidebotham v. Holland* (1895)
1 Q.B. 378 in which the Court of Appeal held that a
notice to quit on the anniversary of the commencement
40 of the term of the tenancy was a good notice. In that
case, although it is settled law that a notice ought to
expire on the last day of the current year of a tenancy
from year to year, Lindley L.J. said :-

In the Court of
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—
No. 17

Judgment
24th November
1978

continued

"But, although a half-year's notice to quit on the 18th would be correct, it does not follow that a notice to quit on the 19th, which is the anniversary of the day on which the tenancy commenced, is bad, and I am clearly of the opinion that it is not. I have looked at all the decisions which were referred to in the argument and at many more, and I can find none in which it has been held that a half-year's notice to quit on the anniversary of the day on which the tenancy commenced is bad. I should be very much surprised to find such a case. The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before. But such subtleties ought to be and are disregarded as out of place".

10

20

In the present case the tenant wanted and was given an assurance of a secured term of three years. The agreement in writing which he subsequently signed contained a clause that "notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other party three (3) months' previous notice in writing". That clause governed the tenancy, new or existing, when the tenant exercised the "option for extension of 3 years". The notice to quit was given and served on 31st January 1972 in relation to the extended term to expire on 30th April 1972. It follows that in substance and in fact the tenant had been given the enjoyment of all his rights under the contract between the parties. Under these circumstances we do not share the doubt felt by Ormerod L.J. and do not find it difficult to hold that the notice to quit given on the 31st January 1972 a few hours before the commencement of the extended term of the tenancy was a valid notice given in compliance with Clause 4(i) of the tenancy agreement. Sorrell's case is distinguishable in that the decision went against the landlord because it was to be implied from Section 23(1) of the Agricultural Holdings Act, 1948 that a notice to quit for terminating a tenancy under that Act must be given in a year of the tenancy.

30

40

In any event, under the circumstances, the validity of the notice to quit ought not, in the words of Lindley L.J., to turn on the splitting of a straw and, even if there was a new tenancy, we hold that it was a valid notice.

For all these reasons, the appeal is allowed with costs here and in the court below.

Sd. WEE CHONG JIN
Chief Justice
Singapore.

Sd. T. KULASEKARAM
Judge.

Sd. D.C. D'COTTA
Judge.

SINGAPORE, 24th November, 1978.

In the Court of
Appeal in
Singapore

No.17

Judgment
24th November
1978

continued

10

No.18

O R D E R

IN THE COURT OF APPEAL IN SINGAPORE

No.18

Order
24th November
1978

20

Civil Appeal No. 25)
of 1978)

BETWEEN : ATTORNEY-GENERAL ,
SINGAPORE Appellant
- and -
CHIN AH LOY Respondent

In the Matter of Suit No. 1428 of 1975

BETWEEN : CHIN AH LOY Plaintiff
- and -
ATTORNEY-GENERAL ,
SINGAPORE Defendant

CORAM:

30

THE HONOURABLE THE CHIEF JUSTICE
OF SINGAPORE
THE HONOURABLE MR. JUSTICE T.
KULASEKARAM
THE HONOURABLE MR. JUSTICE D.C.
D'COTTA

In the Court of
Appeal in
Singapore

IN OPEN COURT

THIS 24th DAY OF NOVEMBER 1978

No.18

O R D E R

Order
24th November
1978
continued

THIS APPEAL coming on for hearing on the 7th day of August 1978 in the presence of State Counsel for the Appellant and Counsel for the Respondent AND UPON READING the Record of Appeal filed herein on the 27th day of May 1978 AND UPON HEARING what was alleged by Counsel as aforesaid IT HAS ORDERED

That the said Appeal should stand adjourned for judgement AND UPON THE said Appeal coming on for Judgement this day in the presence of State Counsel for the Appellant and Counsel for the Respondent IT IS ORDERED

10

THAT this Appeal be and is hereby allowed and that the Judgement of the Honourable Mr. Justice Choor Singh dated the 17th day of March 1978 be set aside.

AND IT IS ADJUDGED that the Respondent's claim be dismissed.

AND IT IS FURTHER ORDERED that the costs of this Appeal and the costs of the Court below be taxed and paid by the Respondent to the Appellant.

20

Given under my hand and seal of the Court this 24th day of November, 1978.

Sd. TAN SECK SAN

ASSISTANT REGISTRAR

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of the Republic
of Singapore

Tender
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60/Pt. V/VIII(GI)

28th October
1971

E X H I B I T S

GENERAL INFORMATION ABOUT THE AIRPORT DUTY
FREE SHOPS

1. Tenders are being invited for the following Duty Free Shops :-

	<u>Shop</u>	<u>Duty Free Liquor & Tobacco Products</u>	
1.	Airport Shop No. 9	Departure/Transit Lounge (See Sketch A)	
2.	Airport Shop No. 11	Departure/Transit Lounge (See Sketch A)	10
3.	Airport Shop No. 22	1st Floor Arrival Hall (See Sketch B)	

2. Successful tenderers are required to meet the cost of any constructions and partitions necessary for the operation of these shops.

3. All building requirements in respect of premises to be occupied by the successful tenderers shall be designed and constructed under the supervision of the P.W.D. and a bill raised to the relevant party to this effect. 20

4. The above shops will operate for an initial period of 3 years with the option of a further extension of 3 years subject to the D.C.A. being satisfied with the quality of the service provided and prices charged.

5. The successful tenderer in addition to the tendered rental will have to pay a built-in annual increment of 6% of the initial amount tendered. The correct interpretation of this increment is as follows :-

Rental

30

a) 1st year : A = original amount tendered

b) 2nd year : B = (A + 6% of A)

c) 3rd year : C = (B + 6% of B)

6. In addition to the tendered rental, the tenants will

be liable for :-

- a) Airport Service Charge of 15% of the basic monthly rental with a minimum of \$20/- and a maximum of \$400/- payable quarterly in advance.
- b) Electricity charges at the approved rates.
- c) Tenants are required to furnish premises at their own expense as stipulated by the Airport Manager.

Exhibits

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Tender
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28th October
1971

continued

10 7. When the tender is extended for a further period, the first year rental of this extended period will not exceed the last rental paid by more than 12%. Thereafter the 6% increase per annum will apply.

8. Tenders should be submitted on the prescribed form and must be accompanied by a Schedule of the prices of the goods intended to be sold by the tenderer (See sample below).

20 9. Prospective tenderers will be shown round the Shops on the 15TH NOVEMBER 1971 at 10.00 A.M. They should assemble at the Airport Manager's Office of the Passenger Terminal Building, Singapore Airport, Singapore 19.

.

Singapore, 28th October 1971.
GHW/dq

SAMPLE TO BE FOLLOWED

(Prices of goods should be submitted in accordance with the following format).

P R I C E L I S T S

Particulars	PRICE PER UNIT			
	S'pore	U.S.	Sterling	Aust.
<u>WHISKY</u>				
<u>AMERICAN/CANADIAN</u>				
Seagram's V.O.	\$9.00	\$3.00	26/-	\$2.80
<u>SCOTCH</u>				
Black & White	\$8.00	\$2.70	23/-	\$2.50

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continued

BRANDIES

Courvosier Napoleon \$27.00 \$9.00 77/6 \$8.20

LIQUOR, GIN, RUM,
CHAMPAGNE ETC.CIGARETTESConsulate White Tip

King Size 20s \$ 5.50 \$1.90 16/- \$1.70

Lucky Strike 20s \$ 6.00 \$2.00 17/- \$1.90

Rothmans King Size

Filter 20s \$ 5.50 \$1.90 16/- \$1.70 10

CIGARS

Agio Junior Tip 10s \$ 1.50 \$0.50 4/5 \$0.50

TOBACCOEdgeworth Ready

Rubbed Pouch
1.6 oz \$15.00 \$5.00 43/- \$4.60

etc. etc.

INSTRUCTIONS TO TENDERERS

1. TENDER FORMS The prescribed Tender Form may be obtained after payment of a deposit of \$500/- to the Financial Officer at the General Office of the Department of Civil Aviation, 5th Floor, Administration Building, Singapore Airport. 20
2. COMPLETED TENDER FORMS Completed Tender Forms must be submitted in sealed envelopes labelled "Tender for Airport Shop No. 9, No. 11 or No. 22 - Airport Duty Free Liquor and Tobacco Products Shop". The name and address of the tenderers should be inserted in the centre of the envelope. 30
3. POSTING OF TENDERS Completed Tender Form shall be posted or deposited in the Tender Box in the General Office of the Department of Civil Aviation, Singapore Airport, Singapore 19.
(NOTE:- Completed Tenders sent by post shall be labelled as above, sealed and enclosed in another envelope addressed to the Director of Civil Aviation).

4. TENDER DEPOSITS Every completed Tender shall be submitted together with the Receipt for a deposit of \$500/-.

5. OFFICIAL RECEIPT An Official Receipt shall be issued in respect of each Tender Deposit.

6. REFUND OF TENDER DEPOSIT

(1) After the successful tenderer is selected, arrangements will then be made for refund of deposits to all tenderers.

10 (2) Tender Deposits shall be refunded if -

- (a) the tender is rejected;
- (b) the tender is unsuccessful;
- (c) the tender is successful, on the Tenderer signing the Tenancy Agreement within two weeks of issue of the Letter of Acceptance;
- (d) the tenderer withdraws his tender before the closing date for tenders.

(3) Tender Deposits shall be forfeited if -

- 20
- (a) the successful tenderer withdraws after he is issued the Letter of Acceptance;
 - (b) the successful Tenderer fails to sign the Tenancy Agreement within two weeks of issue of the Letter of Acceptance.

30 7. EFFECTIVE DATE The Letter of Acceptance shall be posted to the successful Tenderer's address (as given in the Tender Form) and such posting shall be deemed good service of such notice.

8. EXPENSES Expenses incurred in the preparation of the Tender shall be borne by the Tenderer himself.

9. INTERPRETATION The word "Tenderer" in these instructions shall be deemed to include two or more persons if appropriate. The word "his" may also mean "her" or "their" and the word "he" may also mean "she" or "they".

Exhibits

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Tender
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continued

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continued

10. SELECTION OF TENDER The Government does not bind itself to accept the highest or the whole or any Tender and will not enter into any correspondence with any Tenderer regarding the reasons for non-acceptance of a Tender.

11. REJECTIONS Non-compliance with these instructions and/or with other instructions in the Tender Form shall render the Tender liable to rejection.

12. CLOSING DATE

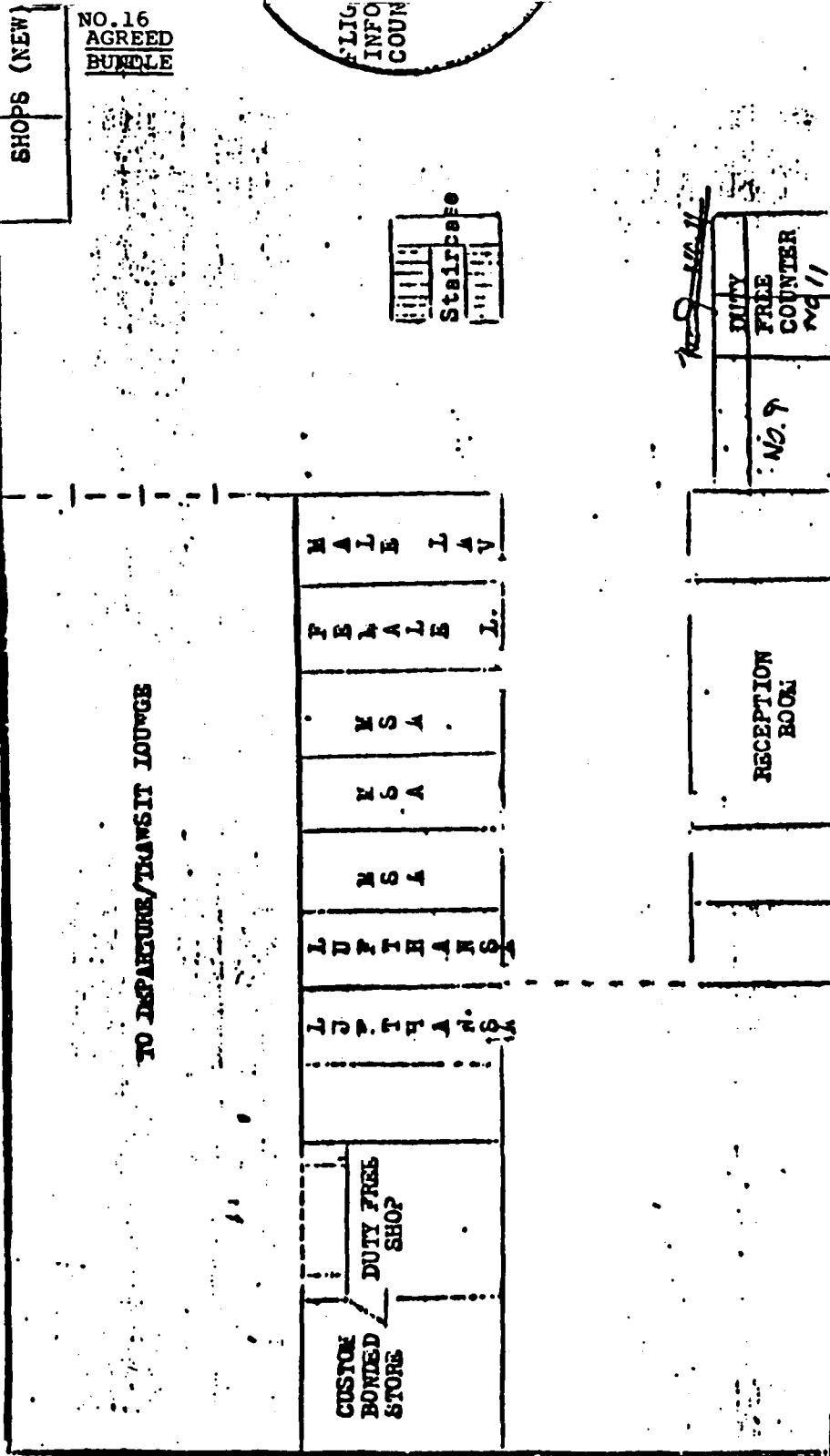
(1) Tenders will be received at the General Office of the Department of Civil Aviation, 5th Floor Administration Building, Singapore Airport, Singapore 19, up to 12 NOON on 30th NOVEMBER 1971.

10

(2) Tenders received after 12 NOON on 30th November 1971, will not be considered.

Singapore, 28th October 1971
GHW/dq

(SKETCH A) - DUTY FREE SHOP
TRANSIT/DEPARTURE LOUNGE



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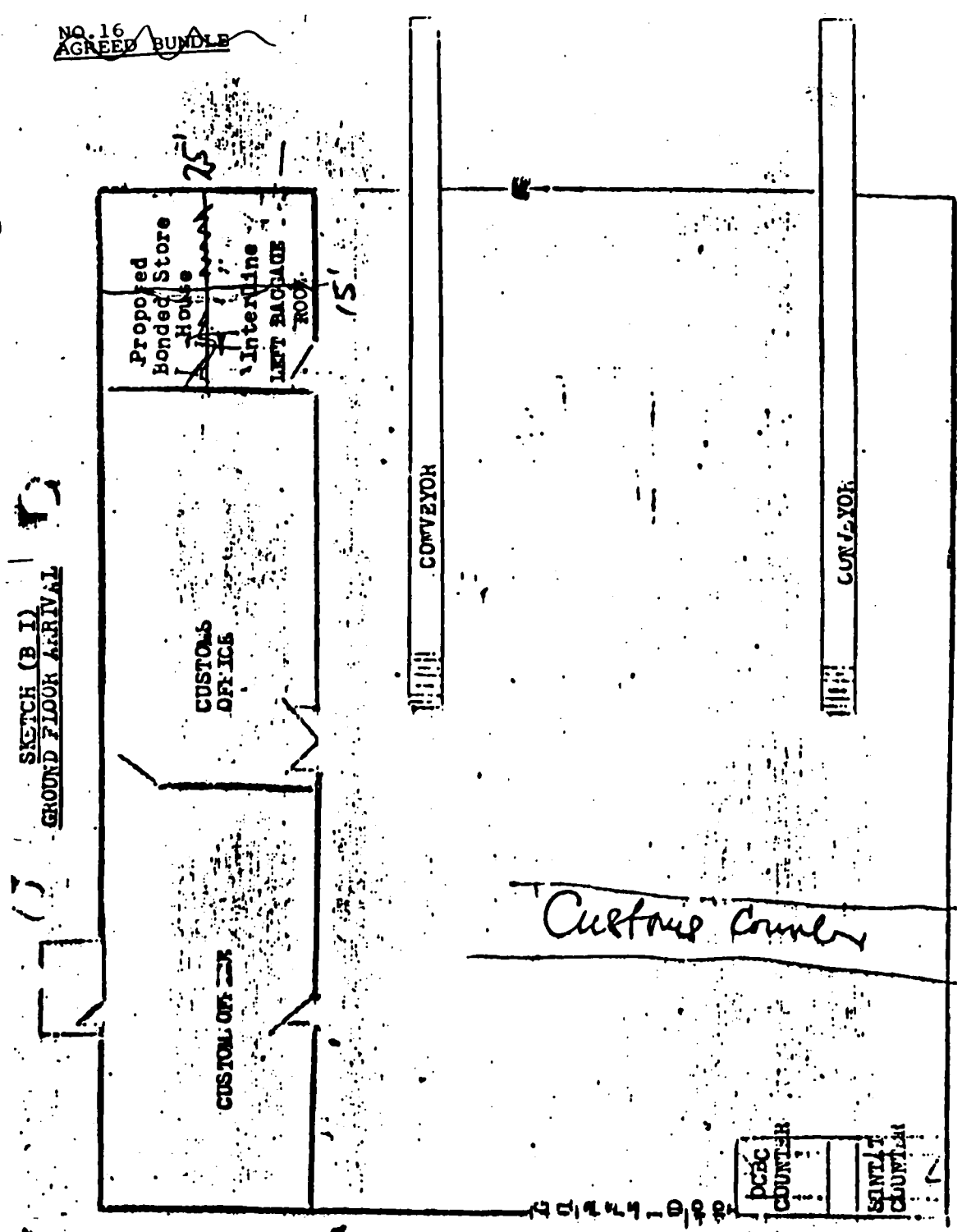
Sketch A
28th October
1971

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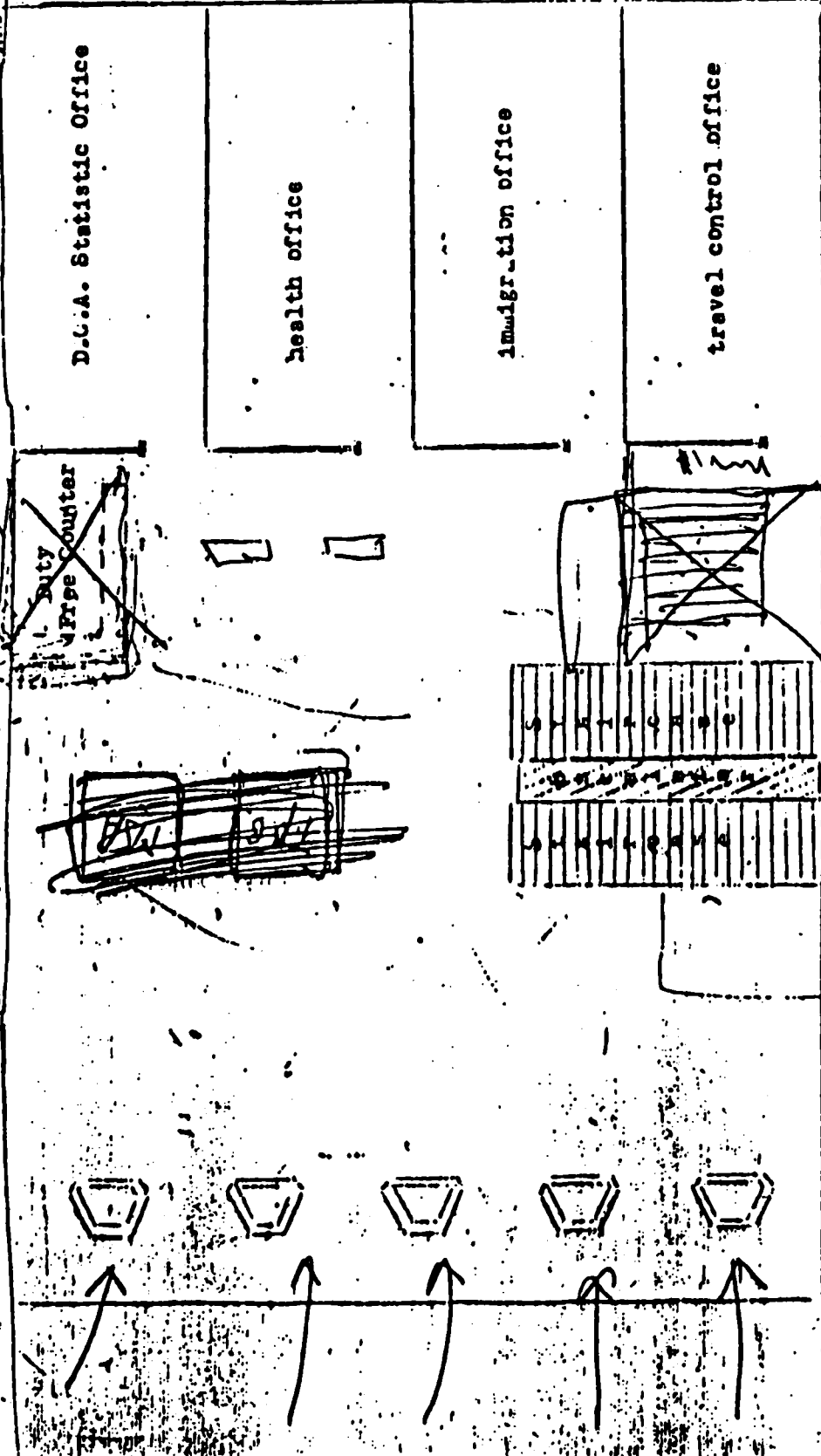
Sketch B1
28th October
1971



NO. 16
AGREED BUNDLE

SKETCH (B)

1st. FLOOR ARRIVAL HALL



Exhibits

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Tender
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Sketch B
28th October
1971

Exhibits

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Chin Ah Loy,
556C, Joo Chiat Road,
Singapore, 15.

30.11.1971

Letter, Chin
Ah Loy to
Department of
Civil Aviation,
Singapore

30th November
1971

Dear Director,

During my international travels, I notice departure passengers always buy their duty free liquor or cigarettes at the airport departure duty free shops or sometimes on board the planes. Thus it is most difficult to project a monthly sales figure for Shop No. 22, being a new one. However, I am interested in such a venture and submit my tender herewith for your consideration.

10

At the moment it is not certain whether domestic flight passengers from West Malaysia will be eligible to buy duty free liquor or cigarettes on arrival at the Singapore Airport. If you can confirm that they will be eligible, I shall like to revise my tendered monthly rental for your consideration provided you are agreeable to this suggestion.

20

Thanking you for your consideration,

Yours truly,

C.A. LOY.

GOVERNMENT OF SINGAPORE

Our Ref. DCA/1/72
Your Ref.

Dept. of Civil Aviation,
Singapore Airport,
Singapore, 19.

11th January, 1972.

Mr. Chin Ah Loy,
556C Joo Chiat Road,
Singapore, 15.

Dear Sir,

Exhibits

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the High Court
of the Republic
of Singapore

Letter,
Department of
Civil Aviation,
Singapore to
Chin Ah Loy

11th January
1972

10 Re: Tender for duty free shop on the 1st floor
of the Arrival Hall

Our discussion in my office dated 8.1.72 refers.

2. I have pleasure in informing you that your tender of \$3,000/- per month or 15.009% of the monthly sales to operate the above shop has been selected by the Government. Please note however that you will have to pay every month a fixed monthly rental of \$3,000/- and the adjustments for the 15.009% of the sales would be made at a later date.

20 3. 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 prices charged.

4. A condition of the tenancy is that the operator should deposit a sum equal to 3 months' tendered rental. The deposit may be :-

- (a) Cash payment equal to 3 months' tendered rental or ;
- 30 (b) Cash payment equal to one month's tendered rental and a Bank Guarantee equal to 2 months' tendered rental for a period of tenancy i. e. 1st February 1972 to 31st January 1975
(Specimen Bank Guarantee is attached).

Exhibits

Agreed Bundle
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Letter,
Department of
Civil Aviation,
Singapore to
Chin Ah Loy
11th January
1972
continued

5. In addition you are required to pay quarterly in advance with effect from the 1st February 1972 :-

- (a) 3 months' tendered rental;
- (b) Airport Service Charge (15% of the reserved rental p. m.) x 3 months.

6. Would you please let me have your written confirmation by the 20th January 1972 that you accept appointment as the operator and that you will operate the duty free shop for 3 years effective from the 1st February 1972.

10

7. Please note that the award of the right to sell the duty free goods do not imply an exclusive right to deal in such items at the Airport.

Yours faithfully,

GOH HONG WAN

f. Director of Civil Aviation.

Letter,
Chin Ah Loy
to Department of
Civil Aviation,
Singapore

19th January
1972

Your Ref: DCA/1/72

Chin Ah Loy,
556C, Joo Chiat Road,
Singapore, 15.

19.1.72

20

The Director of Civil Aviation,
Dept. of Civil Aviation,
Singapore Airport,
Singapore, 19.

Attn: Mr. Goh Hong Wan

Dear Sir,

Re: Tender for duty free shop on the 1st floor of the
Arrival Hall

I thank you for your letter dated 11.1.1972, which was received on 14.1.1972.

30

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 :

- (1) Date of commencement of the tenancy, i. e. 1.2.1972, and
- (2) Para. 7 of your letter.

Reference the date of commencement of tenancy, I would request you to consider postponing it to 18.2.1972. This is due to

- 10 (1) I propose to erect a first class sales counter and staff it with qualified and trained personnel so as to project the image of our Republic to the alien arrivals, and I require more time to accomplish my objectives;
- (2) Designing of the Sales counter commenced only after I had been shown the site on 11.1.1972;
- 20 (3) The design was approved in principle by the Senior Architect of PWD yesterday - 18.1.1972;
- (4) Good construction contractors or advertising studios refuse to undertake any urgent counter erection contract at present because their workers, especially the skilled ones, are heavily committed during this period due to the coming Chinese New Year and they traditionally down tools 10 days before the Chinese New Year;
- 30 (5) Time is required for compliance with the Customs Act and Regulations in respect of the warehouse, sales counter and sales;
- (6) Time is also required for selection of qualified sales staff and their subsequent training, especially in Customs procedures;
- (7) A good sales counter like ours require at least 3 weeks to complete;

Exhibits

Agreed Bundle of Documents in the High Court of the Republic of Singapore

Letter,
Chin Ah Loy to
Department of
Civil Aviation,
Singapore

19th January
1972

continued

Exhibits

Agreed Bundle
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of Singapore

Letter,
Chin Ah Loy to
Department of
Civil Aviation,
Singapore

19th January
1972

continued

- (8) At its completion it is almost on the eve of the Chinese New Year which is followed by public holidays;
- (9) 18th of February (4th day of the Chinese New Year) appears to be the best date for the commencement of business and assumption of duties by my newly recruited staff; and
- (10) However, if my sales counter is ready and staff are recruited and trained much earlier than 12th February, I will commence my business without delay.

10

Reference paragraph 7 of your letter, I wish to state that I have tendered my monthly rental on the basis that there should be only one (1) duty free liquor/cigarettes sale counter on the first floor of the Arrival Hall during the term of my tenancy. This is to be found from the instructions to tenderers issued by you and from the Schedule B attached thereto. Furthermore, I have to incur substantial expenditure in erecting a prestigious sales counter which, I hope, will form part of the landscape of the Arrival Hall, and an equally substantial expenditure in promoting and advertising this new service of the Airport - hitherto unknown to most air travellers. Apart from these, this business requires a considerable capital outlay. In all modesty, I hope to have a reasonable return for the capital and for the work which I personally will be putting in to this unknown "new venture". For these reasons, I would be grateful if you could consider modifying paragraph 7 of your letter as follows :

20

30

"Save for the exclusive right to sell duty free goods at the Arrival Hall of the Airport where my business is to be conducted during the term of my tenancy the award of the right to sell duty free goods do not imply an exclusive right to deal with such items in the other parts of the Airport."

I would be grateful if you could give sympathetic consideration to my request.

Thanking you,

Yours sincerely,

CHIN AH LOY

40

Civil Aviation
Singapore Airport,
Singapore, 19.

DCA/1/72

February 8, 72.

Mr. Chin Ah Loy,
556C Joo Chiat Road,
Singapore 15.

Dear Sir,

Re: Tender for Duty Free Shop on the
First Floor of the Arrival Hall

Exhibits

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of Documents in
the High Court
of the Republic
of Singapore

Letter,
Department of
Civil Aviation,
Singapore to
Chin Ah Loy

8th February
1972

10

I refer to your letter dated 19th January, 1972.

20

We regret to advise that your request for an extension of the date of the commencement of your tenancy i. e. 18th February, 1972, is not agreed to by the Department of Civil Aviation. Your commencement of tenancy therefore would be as scheduled i. e. 1st of February, 1972, irrespective of whether you are in occupation of the premises. Please note that in this connection your rental will commence as from the 1st February, 1972.

Your further requests that you be granted a monopoly for the sale of duty free goods on the first floor of Arrival Hall I am afraid cannot be entertained as it is the intention of the Department of Civil Aviation to promote better services to passengers through the means of competition among operators of shops in the Airport.

30

Attached please find the bills for your duty free shop for the months of February, March and April. You are advised to kindly settle these bills without delay.

Thanking you for your anticipated co-operation.

Yours faithfully,

GOH HONG WAN

f. Director of Civil Aviation
Singapore

GHW/mk

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Letter,
Chin Ah Loy to
Department of
Civil Aviation,
Singapore

18th February
1972

18th February, 1972.

The Director of Civil Aviation,
Singapore Airport,
Singapore, 9.

Attn: Mr. Goh Hong Wan

Dear Sir,

Duty Free Shop, Arrival Hall

Reference my letter dated 19.1.1972, you have informed me that you have rejected my request to change the date of commencement of tenancy from 1.2.1972 to 18.2.1972, and my appeal against para. 7 of your letter dated 14.1.1972. Would you please confirm your rejections in writing early as I have not received your reply to my letter referred to above.

10

Thanks,

Yours faithfully,
CHIN INTERNATIONAL

CHIN AH LOY.

Letter,
Department of
Civil Aviation,
Singapore to
Chin Ah Loy

3rd May 1972

REPUBLIC OF THE GOVERNMENT OF SINGAPORE

Department of Civil Aviation,
Singapore Airport,
Singapore, 9.

20

DCA/1/72

Date: May 3, 1972.

M/S Chin Ah Loy,
20 Hooper Road,
Singapore 9.

Dear Sir,

Re: Tenancy Agreement

I forward herewith Tenancy Agreement (in quintuplicate) in respect of accommodation rented by your Company at Singapore Airport.

30

2. I should be grateful if the following action is taken :-

- (a) Have all 5 copies signed and witnessed.
- (b) Enter the date on which the agreement is to be stamped on the first line.
- (c) Have the original and another copy stamped at the Stamp Office, Supreme Court Building, Singapore 6.
- (d) Return all 5 copies to this Office.

Exhibits

Agreed Bundle of Documents in the High Court of the Republic of Singapore

Letter, Department of Civil Aviation, Singapore to Chin Ah Loy

3rd May 1972

continued

3. The Original Agreement will be forwarded to you after the Perm. Sec. (Communications) has signed it. Early action would be appreciated.

10

Yours faithfully,

GOH HONG WAN

Airport Manager,
for Director of Civil Aviation,
Singapore.

/sl

CHIN INTERNATIONAL
Duty-Free Liquors &
Tobacco Shop, Singapore

Letter,
Chin International
to Department of
Civil Aviation,
Singapore

City Office Tel: 50122 20, Hooper Road,
Airport Office Tel: 809355 Singapore, 9.
Cable Address: CHININTER Republic of Singapore

20

24th June 1972

24th June, 1972

Your ref: DCA/1/72
The Director of Civil Aviation,
Singapore Airport,
Singapore, 19.

Attn: Mr. Goh Hong Wan

Dear Sir,

Re: Tenancy Agreement

Reference your letter dated 3. 5. 1972 enclosing the tenancy agreement for signature, we have to invite your attention to the following observations:

30

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Agreed Bundle
of Documents in
the High Court
of the Republic
of Singapore

Letter,
Chin International
to Department of
Civil Aviation,
Singapore

24th June 1972

continued

- (1) Clause 4 (i) of the tenancy agreement:
The effect of the clause is that we will only have a three months tenancy agreement although on the face of it, it is stated three years. With such a clause, we will not have the confidence to lavish money in promoting this business to our mutual benefits, and beautifying our shop, the object being to turn it into an airport show piece. We have the apprehension that we will not be able to enjoy a secured term of 3 years, and that others may reap the fruit of our labour.

10

On this clause, we hope you would reconsider it. What we want is to have a secured term of 3 years provided we have not committed any serious breach of the tenancy agreement. If necessary, we should like to have an appointment with Mr. Ngiam Dong Dow whom the undersigned knows personally whilst he was with the Federal Chemical Industries (S) Pte. Ltd.

- (2) In your letter DCA/1/72 dated 11.1.1972, you have given us an option for extension of 3 years subject to certain conditions at the expiry of the present term. We do not, however, find this in the tenancy agreement. Would it be an oversight? Please advise.

20

We regret that we take up the above matters with you now because of the undersigned's hospitalization for a considerable period of time.

Yours sincerely,
CHIN INTERNATIONAL

C.L. CHIN

30

Managing Partner.

GOVERNMENT OF THE REPUBLIC OF SINGAPORE

Telephone No: 82321
Tel. Address:
AIRCIVIL,
Singapore

Director of Civil Aviation
Singapore Airport
Singapore 19.

Ref.No. DCA/1/72

27 June, 1972

10 Mr. C.L. Chin
Managing Partner
Chin International
20, Hooper Road
Singapore, 9.

Dear Sir,

Re: Tenancy Agreement

Your minute of the 24th instant refers.

20 We regret to advise that we are unable to reconsider Clause 4(i) of the Tenancy Agreement. Please note that this Clause is a standard one applicable and inserted into all our Agreements. However, you may be reassured 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 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 a part of your Tenancy Agreement with us.

30 We regret to hear of your hospitalisation and would advise that you sign the Agreement without any further delay. Please note that you should not stamp the Agreement as advised. After the Perm. Secretary has signed the Agreement, it will be forwarded back to you for stamping.

We hope to hear from you soonest possible.

Yours faithfully,

GOH HONG WAN

Airport Manager (PL)
f. Director of Civil Aviation
Singapore.

GHW/cmh

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Letter,
Department of
Civil Aviation,
Singapore to
Chin International

27th June 1972

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Lease Agreement,
Ministry of
Communications,
Singapore and
Chin Ah Loy

2nd August 1972

A N A G R E E M E N T made the 2nd day of
August One Thousand
Nine Hundred and Seventy-two (1972) B E T W E E N
THE PERMANENT SECRETARY, MINISTRY OF
COMMUNICATIONS for and on behalf of the Government
of the Republic of Singapore, (hereinafter called the
"Landlord") of the one part and M/S CHIN AH LOY of
20, Hooper Road, Singapore 9 (hereinafter called the
"Tenant" which expression where the context so admits
shall include his successors and assigns) of the other
part

10

WHEREBY IT IS AGREED as follows -

1. (1) In consideration of the rent, the Tenant's
covenants and agreements hereinafter reserved and
contained the Landlord lets and the Tenant takes ALL
that enclosed space measuring 740 square feet or there-
about on the First Floor and Ground Floor of the Arrival
Hall, Passenger Terminal Building which said space is
delineated on the plan annexed hereto and thereon
coloured pink TOGETHER with the Landlord's fixtures
and fittings therein (all of which are hereinafter called
"the demised premises") TO HOLD unto the Tenant for
the term of 3 years from the 1st day of February 1972
determinable as hereinafter provided: Paying therefor
without demand during the said period of 3 years, and
proportionately for any fraction of a year, the yearly
rental as follows :-

20

For the first year, the sum of	\$36,000.00
For the second year, the sum of	\$38,160.00
For the third year, the sum of	\$40,449.60

30

to be payable quarterly, in advance, by equal payments,
the first payment to be made on the 1st day of February
1972 and subsequent payments to be made on the same
day of every third calendar month thereafter.

(2) In addition to the rent stipulated above, if,
and only if, the gross amount of sales realised by the
Tenant in any calendar month multiplied by the factor
of 15.009 per cent shall exceed the sum of \$3,000/-
(which sum of \$3,000/- represents the rent payable
above computed on a monthly basis), the Tenant shall
pay that excess to the Landlord. The said excess is
hereinafter referred to as the "surcharge" and is

40

payable at the times and in the manner hereinafter appearing :-

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2nd August 1972

continued

- (i) For each of the first three months of this tenancy the surcharge payable in respect of any month shall be paid on or before the 15th day of the following month.
- (ii) In respect of every subsequent period of three months a sum to account of the surcharge for the whole period of the three months shall be paid in advance on or before the 15th day of the first month and the amount to account payable hereunder shall be calculated on the monthly average figure of gross sales for the previous three months (the amount payable to account hereunder hereinafter referred to "the estimated surcharge"). On or before the 15th day of the first of the next ensuing three months, the actual amount of the surcharge shall be ascertained and contrasted with the estimated surcharge already paid and any excess due to the Tenant shall be carried forward to account of the following quarter, and any deficiency shall be made good by the Tenant upon notice thereof: Provided that in respect of the last three months of the tenancy, any surplus or deficiency shall be settled by payment or set off against the deposit provided for in clause 2(i) hereof.
- (iii) For the purpose of ascertaining the amount of surcharge payable the tenant undertakes to submit in a form approved by the Landlord an audited account of gross sales for every month on or before the 15th day of the following month.
- (iv) If the Tenant fails or neglects to pay any of the sums whether by way of surcharge or estimated surcharge stipulated above on the date on which the same is required to be paid, he shall pay interest on the amount of such surcharge or estimated surcharge and the provisions of clause 2(ii) shall apply to

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Lease Agreement,
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2nd August 1972

continued

such surcharge or estimated surcharge as it applies to rent over-due: Provided that if the delay in payment is due to delay in computation of the same by reason of the Tenant delaying in submission of such returns or failing to submit proper returns, interest shall be charged on the amount of the surcharge or estimated surcharge finally ascertained but retrospectively to the date on which the same would have been paid if the Tenant had submitted proper returns on time.

10

2. The Tenant hereby covenants with the Landlord -

(i) to deposit with the Landlord on the signing of this Agreement the sum of Dollars Nine Thousand (\$9,000.00) as security against the breach by the Tenant of any of the stipulations and his covenants herein contained, such deposit to be repaid to the Tenant at and only at the termination of this Agreement on payment by him or on set-off of all money then owing by him to the Landlord and the discharge by him of all his obligations hereunder the said deposit not to be taken into account when any question arises whether the Tenant is in breach of the covenant for payment of rent or other charges herein stipulated;

20

(ii) to pay such rent at the times and in the manner aforesaid, such rent or any part thereof to bear simple interest at the rate of nine percent (9%) per annum accruing from day to day from the date the instalment of rent is due to the date of payment, any payment by the Tenant to the Landlord to be appropriated in the first instance to the discharge of any interest payable hereunder and the charging of such interest to be without prejudice to the rights of the Landlord by this Agreement or by the law conferred

30

(iii) to pay to the Landlord an Airport Service Charge in the amount of \$188.70 per month by equal quarterly payments in advance the first payment to be made on the 1st day of February 1972 and subsequent payments to be made on the 1st day of every third calendar month thereafter for services provided by the Landlord for fire protection, refuse collection and for the cleaning and lighting of the entrance and passages leading to the demised premises

40

(iv) to pay all charges for water and electricity consumed in the demised premises within seven (7) days of the same becoming due;

(v) at his own expense to furnish and effect interior decoration on the demised premises with such counters, furniture and fixtures as may be necessary for his business and to the satisfaction of the Landlord;

10 (vi) to keep the demised premises in good repair and condition;

(vii) to keep the premises well stocked, and open and attended to at all times necessary to meet the needs of passengers;

(viii) to use his best endeavour to make the premises attractive for the sale of the particular articles authorised to be sold;

20 (ix) not to make any alterations or additions to the demised premises without the prior written consent of the Landlord;

(x) to use the demised premises for the sole purpose of exhibiting and selling duty free liquor and tobacco products of good quality and condition and at prices approved by the Director of Civil Aviation and not to sell, exhibit or expose for sale therein any goods or articles of any other description without the written consent of the Landlord first obtained;

30 (xi) to observe and conform to all the rules and regulations from time to time made by the Director of Civil Aviation for the management of the said Singapore Airport (Passenger Terminal Building);

(xii) not to do or permit or to be done upon the demised premises anything which may be a nuisance, annoyance, or disturbance to the Landlord or other occupants of or visitors to the said building;

(xiii) not to permit or suffer the demised premises or any part thereof to be used as a place for lodging, dwelling or sleeping;

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Agreed Bundle of Documents in the High Court of the Republic of Singapore

Lease Agreement, Ministry of Communications, Singapore and Chin Ah Loy

2nd August 1972

continued

Exhibits

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Lease Agreement,
Ministry of
Communications,
Singapore and
Chin Ah Loy

2nd August 1972
continued

(xiv) not to affix or permit or suffer to be affixed or exhibited to or upon any part of the demised premises any placard, sign or other advertisement except his nameplate of a form and character to be approved by the Landlord and except as hereinafter provided;

(xv) to exhibit on the demised premises any poster, sign, placard or other advertisement issued by and as requested by the Tourist Promotion Board or any Government Department and to distribute any brochures, leaflets etc. issued by and as requested by the said Board or such Department;

10

(xvi) not to assign, underlet or part with the possession of the demised premises or any part thereof;

(xvii) not to give any bill of sale on any of the goods or effects belonging to him in or about the demised premises without the written consent of the Landlord;

(xviii) to permit the Landlord or its agents with or without workmen and others at all reasonable times to enter the demised premises for the purpose of examining the condition of the demised premises or of taking inventories of the Landlord's fixtures and fittings and upon notice given by the Landlord to execute any repairs required by such notice;

20

(xix) not to place any furniture or other objects in such a position as to obstruct access to cable ducts or without providing access panels;

(xx) to display at a prominent place the price of all goods for the perusal of customers;

(xxi) at all times to ensure and provide efficient, prompt, polite and courteous service to all customers without discrimination whatsoever and in an honest and businesslike manner;

30

(xxii) not to engage by himself, his servant or agent or through any other person in any form of touting or disparagement of the goods or services of other Tenants of the Landlord;

(xxiii) to take out all such licences or permits for or in respect of the Tenant's business as may be required.

(xxiv) to deposit with the Comptroller of Customs such sum as he may stipulate from time to time as security against deficiency in the dutiable stocks held by the Tenant;

(xxv) to maintain such Stock Books and Account Books containing such particulars as may be stipulated by the Comptroller of Customs;

(xxvi) to submit such daily and monthly returns as may be stipulated by the Comptroller of Customs;

10 (xxvii) to provide such additional means for keeping and securing the safety of the dutiable stocks as may be directed by the Comptroller of Customs;

(xxviii) to comply with all customs regulations and all other laws and regulations relating to the Tenant's business;

(xxix) to yield up the demised premises with the fixtures and fittings therein at the determination of the tenancy in good and tenantable repair.

3. The Landlord hereby covenants with the Tenant -

20 (i) that the Tenant paying the aforesaid rents, and other charges herein reserved and observing and performing the several covenants on his part herein contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord; and

30 (ii) to permit the Tenant and his servant to use in common with the Landlord and the tenants and occupiers of other portions of the said building, the lavatories, entrance, staircases, corridors, passages and other common facilities thereof.

4. PROVIDED ALWAYS AND IT IS HEREBY AGREED as follows :-

(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.

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Agreed Bundle of Documents in the High Court of the Republic of Singapore

Lease Agreement, Ministry of Communications, Singapore and Chin Ah Loy

2nd August 1972

continued

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Agreed Bundle
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Lease Agreement,
Ministry of
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Singapore and
Chin Ah Loy

2nd August 1972

continued

(ii) If the rents, the surcharge, the estimated surcharge or any other charges hereby reserved or any part thereof respectively shall be unpaid for twenty-one (21) days after becoming payable (whether formally demanded or not) or if any stipulation or covenant on the Tenant's part herein contained shall not be performed or observed or [sic] if Tenant shall become bankrupt (or, if a corporation, shall go into liquidation other than for reconstruction or amalgamation) or make any assignment for the benefit of his creditors or enter into any agree-
ment or make any arrangement with his creditors for liquidation of his debts by composition or otherwise or suffer any distress or process of execution to be levied upon his goods or if any event shall happen by reason whereof the renewal of any licence in respect of his business shall be refused then and in any of the said cases it shall be lawful for the Landlord at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord in respect of any antecedent breach of the Tenant's covenants or stipulation herein contained

10

20

5. It is hereby agreed and confirmed that nothing herein shall give the Tenant the exclusive right to deal in any of the goods aforesaid at the said Passenger Terminal Building or at any part thereof

IN WITNESS whereof the parties have hereunto set their names, the day and year first above written

Signed by The Permanent)
Secretary, Ministry of)
Communications, Singapore)
6. for and on behalf of the) [SIGNATURE: ILLEGIBLE]
Government of the Republic)
of Singapore, in the presence)
of :-)

30

[SIGNATURE: ILLEGIBLE]

Signed by the said M/S Chin)
Ah Loy of No. 20 Hooper) [SIGNATURE: ILLEGIBLE]
Road, Singapore 9. in the)
presence of :-)

40

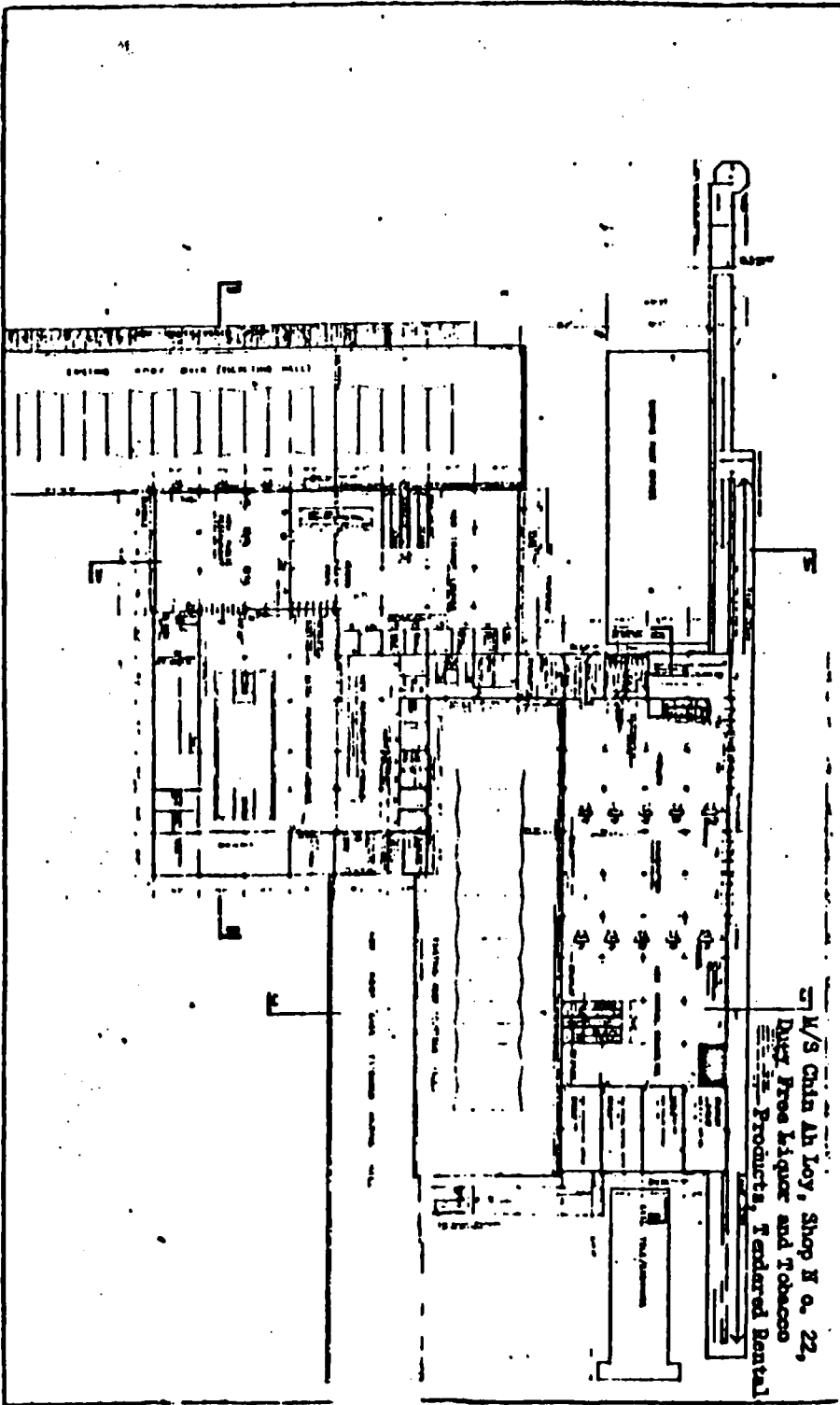
[SIGNATURE: ILLEGIBLE]

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Plan to Lease
Agreement,
Ministry of
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Singapore and
Chin Ah Loy

2nd August 1972



\$3,000/yr

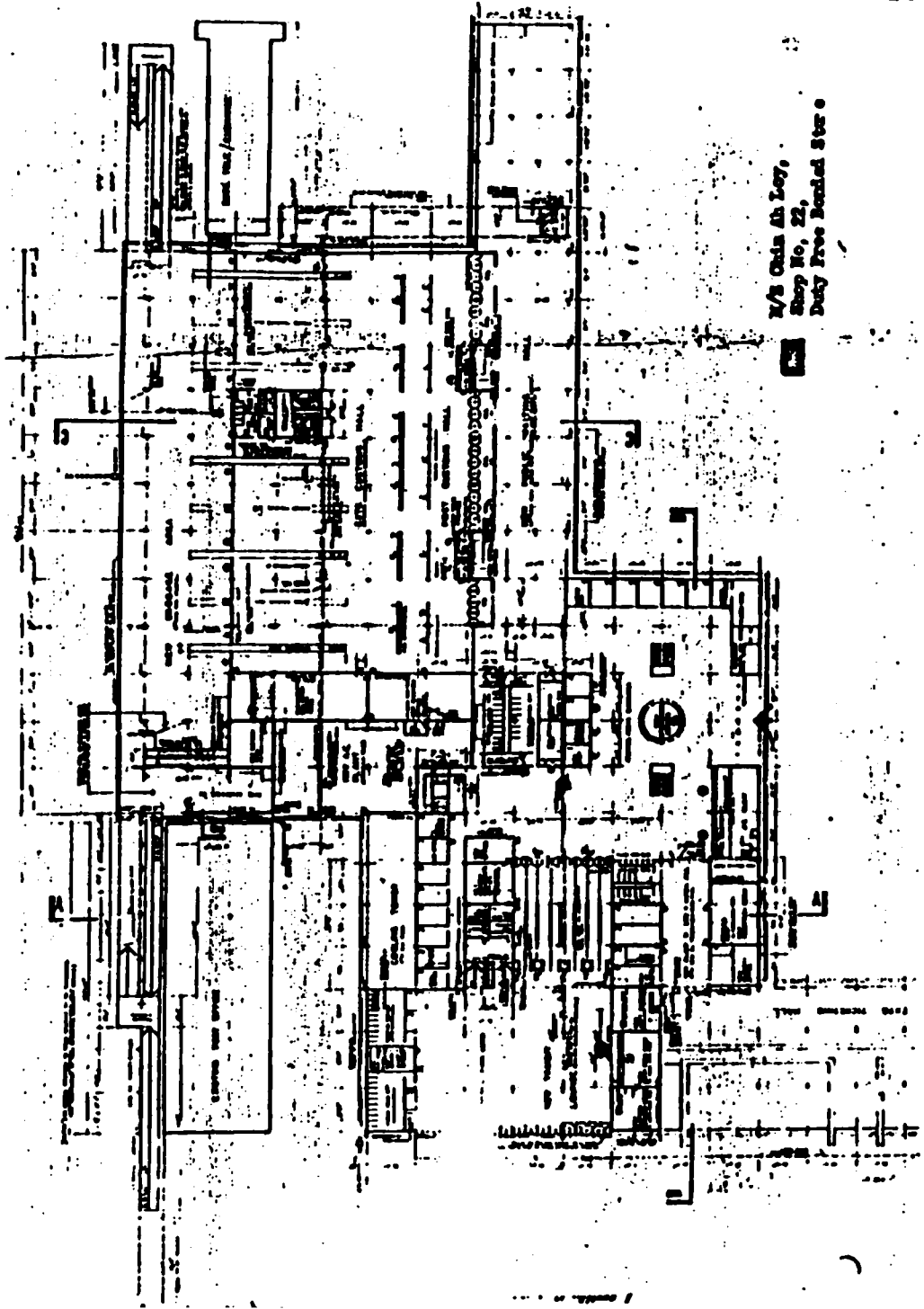
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Plan to Lease
Agreement,
Ministry of
Communications
Singapore and
Chin Ah Loy

2nd August 1972

continued



1/2 Chin Ah Loy,
Shop No. 22,
Duty Free Banded Store

CHIN INTERNATIONAL

Duty-Free Liquors & Tobacco Shop
for Incoming Passagers,
Singapore International Airport

Telephone: 400258
Cable: CHININTER

Correspondence Address:
20, Hooper Road,
Singapore, 9.
Republic of Singapore.

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of Documents in
the High Court
of the Republic
of Singapore

Letter, Chin
International to
Department of
Civil Aviation,
Singapore

30th October
1974

10 The Director of
Civil Aviation
Paya Lebar Airport,
SINGAPORE 19.

30th October, 1974

Attention: Mr. Chan Wah Yian

Dear Sir,

We take this opportunity to thank you for your assistance and advice to enable us to make a success of your concept of airport arrival hall duty free liquors and tobacco shop, the first and only one of its kind in the world.

20 We are pleased with the happy relationship subsisting between you and us throughout the past two years and nine months, and wish to continue this happy relationship with you for another three years.

We would now like to exercise and we do hereby exercise the option which you gave to us in paragraph 3 of your letter dated 11th January, 1972 and we look forward to your early confirmation of the extension of the tenancy for a further term of three years.

For ease of your reference, we enclose herewith the following documents/correspondence :-

- 30
- 1) DCA General Information About The Airport Duty Free Shop.
 - 2) DCA's letter, DCA/1/72, dated 11.1.1972.
 - 3) Our letter dated 19.1.1972.
 - 4) Our letter dated 24.6.1972.
 - 5) DCA's letter, DCA/1/72, dated 27.6.1972

Kindly contact us if you have any enquiries with regard to this application.

40 We thank you for your recent approval of our application to sell Guinness Stout in our shop. Thus our shop has become the first airport duty free shop in the

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Letter, Chin
International to
Department of
Civil Aviation,
Singapore

30th October
1974

continued

world to introduce the sale of malt liquor, i. e. stout. A recent feasibility study on the sale of famous Main-land China tonic/herbal liquors and wines has just been concluded. The introduction of these liquors and wines is aimed at the Chinese educated/illiterate passengers (mainly elderly men/women) who don't buy or consume "western wines", and also to render the shop to have a large collection of Western and Chinese liquors and wines. An application for the sale of such tonic/herbal liquors and wines will be lodged for your consideration.

10

We enclose herewith some letters and a news-
paper clipping for your reference on our integrity :-

- 1) The Singapore Tourist Promotion Board's letter dated 7.10.1974
- 2) Our letter dated 25.9.1974 to Mr. Gomez.
- 3) Our letter dated 28.8.1974 to Drs. Horne.
- 4) Mr. John Lee's letter of appreciation dated 2.10.1973
- 5) Discal Corporation's letter dated 17.5.1973
- 6) Nanyang Siang Pau "Readers' Voice" page dated 31.8.1973.
- 7) Our letter dated 6.7.1973 to Mr. Hng.
- 8) Our letter dated 20.4.1972 to Mr. Newsbury.
- 9) Air New Zealand's letter dated 7.4.1972.

20

Yours faithfully,
CHIN INTERNATIONAL

C. L. CHIN
(Managing Partner)

.....
CHIN AH LOY
(Partner)

30

Encl:

400258

Exhibits

Agreed Bundle
of Documents in
the High Court
of the Republic
of Singapore

23rd November, 1974.

By Hand

The Director of Civil Aviation,
Paya Lebar Airport,
Paya Lebar Road,
Singapore.

Letter, Chin
International to
Department of
Civil Aviation,
Singapore

Attn.: Mr. Chan Wah Yian

23rd November
1974

Dear Sir,

10 Further to our letter dated 30.10.1974 on our
request for the extension of our tenancy for a further
term of 3 years, we wish to inform you that to promote
to the tourists and locals the concept of the sale of
duty free liquors and tobacco in the Singapore Airport
to arriving passengers, we have incurred from 1.3.1972
to September, 1974 an audited expenditure of \$94,805.12.

The newspapers and publications made use of:

- 20
1. The Australian
 2. South China Morning Post
 3. Jakarta Times
 4. Philippine Times
 5. Brunei Gazette
 6. Chinese Papers in Sabah
 7. Bangkok Post
 8. The Straits Times
 9. Sin Chew Jit Poh
 10. Nanyang Sian Pau
 11. The Singapore Tourist Promotion Board's
publications in English and Japanese

30 Other expenditure has been incurred in the printing and
mailing of circular to all the traders and professional
associations, Chinese guilds and associations, board
members of public companies listed in the Stock Exchange,
members of the Singapore Manufactures Association,
and the Employers' Federation, and also all the foreign
missions in Singapore. This circular has also been sent
to travel agents in the Asian countries, Australia, U.K.,

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Letter, Chin
International to
Department of
Civil Aviation,
Singapore

23rd November
1974

continued

Japan and the United States.

Post card size circular has been put on the
windscreens of cars parked in the shopping complexes
in town, and the public car parks.

To achieve the aim of voluntary publicity by
regular passenger-customers and airlines staff on
F.O.C. travel, a 10% discount from the bill is often
accorded to them.

At present advertisement in the Chinese Press is
still being inserted. This is aimed at the Chinese
educated "once in a life-time" air passengers residing
in Singapore and Malaysia.

10

We are pleased to note that our policy of ploughing
a sizable amount of revenue to invest in publicity has
been successful. From the onset we were aware of our
handicap, i. e. Airport arrival hall duty free facility was
virtually unknown to anybody, and also competition from
established institutions such as foreign airport departure
hall duty free shops and airlines' sale on board the
aircraft.

20

Yours faithfully,
CHIN INTERNATIONAL

C. L. CHIN

Managing Partner.

s.l.

DEPARTMENT OF CIVIL AVIATION
Singapore Airport, Singapore 19.
Republic of Singapore.

Telephone:
82321

Cable Address:
AIRCIVIL,
SINGAPORE

Telex No.
RS21231

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of Singapore

10

Mr. Chin Ah Loy
Chin International
Duty Free Shop
Arrival Hall
Singapore Airport
Singapore 19

Our Ref: 2.3.22
Your Ref:
Date: 18 Jan 75

Letter,
Department of
Civil Aviation,
Singapore to
Chin Ah Loy

18th January
1975

Dear Sir,

TERMINATION OF TENANCY

Your tenancy to operate Shop No 22 in the Arrival
Hall will expire on 31 Jan 75.

2 Please be reminded that you are required to vacate
the premises and remove all your stocks from our
building as early as possible by midnight 31 Jan 75.

20

Yours faithfully,

CHAN WAH YIAN
for DIRECTOR OF CIVIL AVIATION

CWY/mk

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of Singapore

Letter, Lee &
Co., Solicitors,
to Department of
Civil Aviation,
Singapore

25th January
1975

LEE & CO.

Advocates & Solicitors
LEE BON LEONG - FRANCIS C.H. LEE

Room 1, 5th Floor, A.C.B.C. Building,
No. 104, Robinson Road, Singapore 1.
Tel: 913122, 913585, 913586

Your Ref: 2.3.22
Our Ref: FL.MC.1074.72.Pt.2
Date: 25th January 1975

BY HAND

The Department of Civil Aviation,
Singapore Airport,
Singapore 19.

10

ATTN: MR. CHAN WAH YIAN

Dear Sirs,

Re: Duty Free Shop, Arrival Hall

We act for Mr. Chin Ah Loy and M/s. Chin International
and refer to your letter of 18th January 1975.

Your said letter made no reference to our clients' letter
with enclosures to you dated 30th October 1974 and we
shall be obliged if you would confirm receipt thereof.
We would refer your immediate attention to the
following :

20

1. Paragraph 4 of the General Information About The
Airport Duty Free Shops containing the tender
invitation and bearing reference DCA/ADM/52/60
Pt V/VIII(GI).
2. Paragraph 3 of your letter dated 11.1.72 to our
clients bearing reference DCA/1/72.
3. Paragraph 1 item (2) of our clients' letter dated
24.6.72 to you.
4. Paragraph 3 of your letter dated 27.6.72 to our
clients bearing reference DCA/1/72.

30

These provisions evidence the grant of an express option
for extension of the tenancy for a further period of 3
years from the expiration of the original term, which

option was duly exercised per paragraph 3 of our clients' letter of 30th October 1974.

We shall therefore be obliged to know why you have not confirmed the extension of the tenancy but instead requested on 18.1.75 that our clients vacate the premises by 31.1.75. If you are refusing to extend the term, please state the grounds for such refusal.

10 In the meantime, our clients and their staff are remaining on the premises but we understand that they are experiencing difficulty extending their airport passes and have received a request from the Airport Customs to remove their goods in time. It is our view that you are not entitled to require our clients to vacate the premises and if our clients are directly or indirectly prevented from carrying on their normal business, they shall have no alternative but to look to you for full legal redress.

This letter is delivered by hand of Mr. Chin Chow Lai. Your urgent reply shall be appreciated.

20 Yours faithfully,

LEE & CO.

c. c. 1. M/s Tan Kim Seng & Co.
2. Clients
3. Airport Customs
4. Airport Police
5. Immigration Department

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Letter, Lee &
Co., Solicitors,
to Department of
Civil Aviation,
Singapore

25th January
1975

continued

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of Singapore

Letter,
Ministry of
Communications,
Singapore to
Chin Ah Loy

31st January
1975

Our ref:
Min Com CA 7/1-12
Your ref:

31 January 1975

Mr. Chin Ah Loy
20 Hooper Road
Singapore 9.

Dear Sir,

MINISTRY OF COMMUNICATIONS
2nd Floor, Government Offices,
St. Andrew's Road,
Singapore, 6
Republic of Singapore.

REGISTERED

With reference to your letter of 30 Oct 74 addressed 10
to the Director of Civil Aviation and your exercise of the
option to renew our Tenancy Agreement dated 2 August
1972, we confirm that the Government has granted to you
an extension of the said Tenancy Agreement with effect
from 1 February 1975 on the same terms and conditions
as the said Tenancy Agreement. Nevertheless we hereby
give you 3 months' notice under clause 4(i) of the said
Tenancy Agreement as extended hereunder to terminate
your tenancy thereunder.

2. The rental payable under sub-clause 1(1) for the 20
3 months with effect from 1 February 1975 will be $\frac{1}{4}$ of
(\$40,449.60 + 6% of \$40,449.60), i. e. \$42,876.58,
subject to your liability to pay the surcharge in accor-
dance with sub-clause 1(2).

3. Please note that this notice expires on 30 April
1975. You are therefore required to vacate the
premises and remove all your goods from the premises
as soon as possible but not later than 30 April 1975.

Yours faithfully

H. R. HOCHSTADT
AG PERMANENT SECRETARY
MINISTRY OF COMMUNICATIONS

30

cc Mr. Chin Ah Loy)
c/o Chin International) By Hand

Messrs. Lee & Co.
Advocates & Solicitors
Room 1, 5th Floor, A.C.B.C. Building,
No. 104, Robinson Road,
Singapore 1.

40

LEE & CO.

Advocates & Solicitors
LEE BON LEONG - FRANCIS C.H. LEE

Room 1, 5th Floor, A.C.B.C. Building,
No. 104, Robinson Road, Singapore 1.
Tel: 913122, 913585, 913586

Your Ref: Min Com CA 7/1 - 12
Our Ref: FL, MC, 45.75
Date: 17th February 1975

U R G E N T

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of Documents in
the High Court
of the Republic
of Singapore

Letter, Lee &
Co., Solicitors,
to Ministry of
Communications,
Singapore

17th February
1975

10 The Ministry of Communications,
2nd Floor, Government Offices,
St. Andrew's Road,
Singapore, 6.

FOR KIND ATTENTION OF
MR. H R HOCHSTADT
AG PERMANENT SECRETARY

Dear Sirs,

Re: Duty Free Shop, Arrival Hall

20 We thank you for your letter of 31st January 1975
addressed to our client Mr. Chin Ah Loy, and a copy
thereof in our favour.

We believe the same is also in reply to our letter of
25th January 1975 addressed to the Department of
Civil Aviation and that it overrides the Department's
letter of 18th January 1975 addressed to our client.

We are taking instructions on the matter and shall
revert to you shortly.

Yours faithfully,

LEE & CO.

30 c. c. 1. M/s Tan Kim Seng & Co.
2. Clients

Exhibits

Agreed Bundle
of Documents in
the High Court
of the Republic
of Singapore

Letter, Lee &
Co., Solicitors,
to Ministry of
Communications,
Singapore

24th March 1975

LEE & CO.

Advocates & Solicitors
LEE BON LEONG - FRANCIS C.H. LEE

Room 1, 5th Floor, A.C.B.C. Building,
No. 104, Robinson Road, Singapore 1.
Tel: 913122, 913585, 913586

Your Ref: Min Com CA 7/1 - 12

Our Ref: FL.MC.45.75

Date: 24th March 1975

A.R. REGISTERED

U R G E N T

The Ministry of Communications,
10th Floor, PSA Towers,
Telok Blangah Road,
Singapore 4.

10

FOR KIND ATTENTION OF
MR. H R HOCHSTADT
AG PERMANENT SECRETARY

Dear Sirs,

Re: Duty Free Shop, Arrival Hall
Chin International

We write further to our letter of 17th February 1975
which we trust has reached you safely.

20

We are now instructed to convey our clients' apprecia-
tion for your confirmation of the extension of the tenancy.

Our clients however cannot accept the termination of the
tenancy under clause 4(i) of the original Agreement.
This clause was the subject matter of negotiations and
correspondence between our clients and the Director of
Civil Aviation and we would in particular refer to our
clients' letter of 24th June 1972 to the Director and his
reply of 27th June 1972, photocopies of which we enclose
herewith for your easy reference.

30

It is our considered opinion that clause 4(i) of the Agree-
ment can only be exercised if our clients have not
observed the rules and regulations of the Agreement.
The notice contained in your letter of 31st January 1975
which purported to terminate the extended tenancy under

that clause is clearly invalid. Our clients are therefore not obliged to comply with the notice which expires on 30th April 1975 and we shall be much obliged if you would withdraw the same. If our clients are directly or indirectly prevented from carrying on their normal business after that date, they shall have no option but to look to the Ministry for full legal redress.

10 In the meantime, we must inform you that the SIA Emporium which has been set up to replace our clients' business in the Hall has left goods and materials beside their counter in such manner as to virtually obscure from the view of incoming passengers our clients' counter and our clients have written on 17th March 1975 in protest to the Airport Terminal Supervisor. In the interests of justice and fairness to our clients, we shall be pleased if you would investigate the matter and remove the SIA Emporium to rectify the situation.

20 Please let us hear from you.

Yours faithfully,

LEE & CO.

c. c. Clients
Encs.

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Letter, Lee &
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Singapore

24th March 1975

continued

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Letter, Lee &
Co., Solicitors,
to Ministry of
Communications,
Singapore

4th April 1975

LEE & CO.

Advocates & Solicitors
LEE BON LEONG - FRANCIS C.H. LEE

Room 1, 5th Floor, A.C.B.C. Building,
No. 104, Robinson Road, Singapore 1.
Tel: 913122, 913585, 913586

Your Ref: Min Com CA 7/1 - 12

Our Ref: FL.MC.45.75

Date: 4th April 1975

U R G E N T

The Ministry of Communications,
10th Floor, PSA Towers,
Telok Blangah Road,
Singapore 4.

10

FOR KIND ATTENTION OF
MR. H R HOCHSTADT
AG PERMANENT SECRETARY

Dear Sir,

Re: Duty Free Shop, Arrival Hall
Chin International

We refer to our letter of 24th March 1975 to which you
have not replied.

20

Despite the greatest forbearance on the part of our
clients, they find the situation at the Arrival Hall quite
intolerable. Besides the extremely unfair treatment
the Director of Civil Aviation has given to our clients
in the setting up of the SIA Emporium, the stacking of
goods and materials at the Emporium appears to be a
deliberate attempt to wipe out the business of our
clients at the Hall. Our clients have already suffered
substantial losses of business and you will appreciate
that they shall have to seek legal redress if the situa-
tion is not rectified immediately.

30

In the interests of justice in this matter, we shall be
obliged if you would look into the same and let us hear
from you immediately.

Yours faithfully,

LEE & CO.

c. c. Clients

MINISTRY OF COMMUNICATIONS
10th Floor, PSA Towers,
Telok Blangah Road, Singapore 4.
Republic of Singapore
Cable Address MINCOMMS SINGAPORE

Our ref: Min Com CA 7/1-12
Your ref:

5 Apr 75

10 M/s Lee & Co
Advocates & Solicitors
Room 1, 5th Floor
ACBC Building
No 104 Robinson Road
Singapore 1.

Gentlemen

DUTY FREE SHOP, ARRIVAL HALL
CHIN INTERNATIONAL

We refer to your letter of 24 Mar 75.

20 2 We have been advised that there is no substance
in the arguments stated in your letter relating to the
validity of our Notice dated 31 Jan 75 to terminate the
Tenancy Agreement. Please note that that Notice still
stands and we have no intention whatsoever of with-
drawing it.

30 3 Since the issue of our aforesaid Notice, your
clients have defaulted in making the payments, or at
least a part thereof, within the stipulated period of
21 days as required of them under the provisions of
Clause 4(ii) of the Tenancy Agreement. We, there-
fore, hereby give notice to your clients that, by
reason of their breach of Clause 4(ii), we shall forth-
with exercise our right under that provision "to re-enter
upon the demised premises or any part thereof in the
name of the whole and thereupon this demise shall
absolutely determine but without prejudice to the right
of action of the Landlord in respect of any antecedent
breach of the tenant's covenants or stipulation herein
contained".

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Letter, Ministry
of Communications
Singapore to
Lee & Co.,
Solicitors

5th April 1975

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Letter, Ministry
of Communications
Singapore to
Lee & Co.,
Solicitors

5th April 1975

continued

4 However, before proceeding to do so and without prejudice to the foregoing, we hereby give your clients an opportunity to vacate the premises on or before 30 Apr 75, failing which we will proceed to do so immediately and without further notice to you or your clients.

5 We will rely on your clients' breach of Clause 4(ii) as a further or alternative ground for terminating the Tenancy Agreement.

6 Without prejudice to paras 3, 4 and 5 above, we hereby demand that your clients should settle all arrears of payments together with interest thereon as provided in the Tenancy Agreement within 7 days from the date hereof, failing which we will take such action as we may be advised without further notice. You might wish to refer to the letter dated 18 Mar 75 from the Director of Civil Aviation addressed to Mr C L Chin of Chin International.

10

7 As regards para 5 of your letter, we have taken the necessary action on the matter and we trust that the situation has been rectified satisfactorily.

20

8 Please note that anything which shall be left behind on the premises by your clients after 30 Apr 75 might be removed and all expenses relating to such removal will be charged to your clients.

Yours faithfully

H R HOCHSTADT

Ag PERMANENT SECRETARY
MINISTRY OF COMMUNICATIONS
SINGAPORE

cc Chin International

30

cc Attorney-General

cc Director of Civil Aviation

TAN KIM SENG
Advocates & Solicitors
6-A, Telok Ayer Street
Singapore, 1.

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Agreed Bundle
of Documents in
the High Court
of the Republic
of Singapore

TKS/HT/713-A/

3rd May, 1975

The Attorney-General,
Attorney-General Chambers,
Government Offices,
SINGAPORE.

IMMEDIATE

Letter, Tan
Kim Seng,
Solicitors to
Attorney-General,
Singapore

3rd May 1975

10 Dear Sir,

Re: Suit No. 1428 of 1975

We act for Mr. Chin Ah Loy of No. 20 Hooper Road, Singapore and we have on our client's instructions, commenced proceedings in Suit No. 1428 of 1975 against the Government of the Republic of Singapore in respect of the premises let to our client at the Arrival Hall, Singapore International Airport.

20 We are instructed that as at midnight, 30th April, 1975, our client his servants or agents have been prevented from entering and from doing business at the premises and all access passes have been withdrawn. We are further instructed that the Government has, through its servants or agents, threatened and continue to threaten to re-enter the premises and to forcefully remove our client's business counter and his stock of liquor and tobacco products.

30 If this has been a dispute between two private persons, we would have applied and would have obtained an interim injunction to protect our client's interest. Our client's dispute, however, is with the Government and by Section 27(1)(a) of the Government Proceedings Act, the Court is precluded from making an injunction, interim or otherwise against the Government. The rationale behind Section 27 is that the Government need not be restrained and it is because of this that we are appealing to you to use your good offices to advise the Government its servants or agents against forcefully from re-entering the premises and from removing our client's business counter and his stock of liquor and tobacco products.

40

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Letter, Tan
Kim Seng,
Solicitors to
Attorney-General,
Singapore

3rd May 1975

continued

Our client has built up his business at the Arrival Hall from scratch and he has spent more than \$100,000/- in advertising and in promoting his business. Our client's tenancy has been terminated for no other reason other than to enable the Singapore Airport Duty-Free Emporium (Private) Limited to reap the fruits of our client's labour. The Singapore Airport Duty-Free Emporium (Private) Limited, if the corporate veil is lifted, is in truth and in fact the Government or the interests of the Government despite whatever name you may give to it.

10

In the interest of justice, therefore, we would be obliged if you could see a way to persuade the Government, pending the determination of the dispute by the Court, to allow our client to continue with his existing business on a without prejudice basis upon our client's undertaking to pay the rent and surcharge that he is obliged to pay under the Agreement.

We would be grateful for your early consideration on this matter.

20

Yours faithfully,

c. c. Mr. Chin Ah Loy
c/o Messrs. Lee & Co.

b. c. c. Mr. Chin Chow Lai
20 Hooper Road

Mr. K.S. Chung
M/s. Chung & Co.

Attorney-General's Chambers,
High Street,
Singapore 6.

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Agreed Bundle
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the High Court
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of Singapore

Our Ref: AG/Civ 76/75
Yr. Ref: TKS/HT/713-A/

IMMEDIATE

6 May 75

M/s Tan Kim Seng & Co.
Advocates & Solicitors
6A Telok Ayer Street
1st Floor
Singapore 1.

10

Letter,
Attorney-General,
Singapore to
Tan Kim Seng,
Solicitors

6th May 1975

Gentlemen

SUIT NO 1428 OF 1975

Thank you for your letter of 3rd May 1975.

2 As your client is aware the Arrival Hall is a security area to which the public have no access save those persons authorised to enter it and arriving passengers. The tenancy agreement was the only reason why your client was allowed in the Arrival Hall.

20

3 As the notice terminating your client's tenancy expired on 30th April, 1975, there was no reason to allow your client to go into the Arrival Hall thereafter or to remain there. Accordingly, the passes issued solely for the purposes of the tenancy agreement were properly withdrawn after the expiry date.

30

4 In pursuance of the notices contained in both the letters dated 31st January 1975 and 5th April 1975 from the Government to your client, the Government re-entered the premises on 1st May 1975. As your client failed to remove his counter within the grace period given to him to do so, it has since been removed. Should your client wish to claim it, it will be delivered after all charges relating to its removal have been paid by your client.

5 Your client failed to remove the stock of liquor and tobacco products from the premises although he had

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Letter,
Attorney-General,
Singapore to
Tan Kim Seng,
Solicitors

6th May 1975

continued

been specifically asked to do so. Please note that if your client should fail to remove these within the next 7 days, they will be removed entirely at your client's expense.

6 Even if paragraph 4 of your letter were correct, in respect of which I offer no comment at this stage, it would be of no relevance at all to the exercise of the absolute or overriding right of either party to terminate the tenancy at any time by giving the prescribed notice under clause 4(i) of the Agreement.

10

7 With due respect, I do not agree that your client would have been entitled to obtain an injunction if the dispute had been one between 2 private persons.

8 Having regard to the foregoing, I regret that I am unable to accede to your client's request stated in paragraph 5 of your letter.

Yours faithfully

LEE BIAN TIAN

for ATTORNEY-GENERAL

MINISTRY OF COMMUNICATIONS
2nd Floor, Government Offices,
St. Andrew's Road,
Singapore, 6
Republic of Singapore

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of Documents in
the High Court
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of Singapore

Our ref: Min Com CA 7/1-12

31 January 1975

Mr Chin Ah Loy
20 Hooper Road
Singapore 9

10

REGISTERED

Letter, Ministry
of Communications
Singapore to
Chin Ah Loy

Dear Sir

31st January 1975

With reference to your letter of 30 Oct 74
addressed to the Director of Civil Aviation and your
exercise of the option to renew our Tenancy Agreement
dated 2 August 1972, we confirm that the Government
has granted to you an extension of the said Tenancy
Agreement with effect from 1 February 1975 on the
same terms and conditions as the said Tenancy Agree-
ment. Nevertheless we hereby give you 3 months'
notice under clause 4(i) of the said Tenancy Agreement
as extended hereunder to terminate your tenancy
thereunder.

20

2 The rental payable under sub-clause 1(1) for the
3 months with effect from 1 February 1975 will be $\frac{1}{4}$
of (\$40,449.60 + 6% of \$40,449.60), i. e. \$42,876.58,
subject to your liability to pay the surcharge in accor-
dance with sub-clause 1(2).

3 Please note that this notice expires on 30 April
1975. You are therefore required to vacate the
premises and remove all your goods from the premises
as soon as possible but not later than 30 April 1975.

30

Yours faithfully

H R HOCHSTADT

AG PERMANENT SECRETARY
MINISTRY OF COMMUNICATIONS

RECEIVED
AT 9.30 a. m.
ON 1.2.1975

cc Mr Chin Ah Loy)
c/o Chin International) By Hand

Messrs Lee & Co.
Advocates & Solicitors
Room 1, 5th Floor, A.C.B.C. Building,
No. 104, Robinson Road,
Singapore 1.

40

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of Singapore

DEPARTMENT OF CIVIL AVIATION
Singapore Airport, Singapore 19
Republic of Singapore

Telephone: 82321 Cable Address: AIRCIVIL, SINGAPORE Telex No: RS 21231

Letter, Department
of Civil Aviation,
Singapore to Chin
International

Messrs Chin International
20, Hooper Road
Singapore 9

Date 19 Feb 75

19th February
1975

Dear Sirs

10

May I remind you that payment of the actual
surcharge for Nov 74 to Jan 75 and the estimated
surcharge for Feb to Apr 75 have been overdue.

2 I shall be grateful if you will effect payment
without further delay.

Yours faithfully

MARK ANTHONY WONG

for DIRECTOR OF CIVIL AVIATION

MAW/cmh

22nd February 1975

THE DCA

ATTN: MR. MARK ANTHONY WONG

Reference your letter dated 19.2.1975, we wish to inform you that we are consulting our solicitors on the matter of the estimated surcharge, and shall inform you of the result of our consultation.

10 Meanwhile, would you advise urgently whether the surcharge should be made under sub-clause (1) (2) (i) or (1) (2) (ii).

Yours faithfully,
CHIN INTERNATIONAL

C. L. CHIN

Managing Partner

k. 1.

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Letter, Chin
International to
Department of
Civil Aviation,
Singapore

22nd February
1975

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of Singapore

DEPARTMENT OF CIVIL AVIATION
Singapore Airport, Singapore 19
Republic of Singapore

Telephone: 82321 Cable Address: AIRCIVIL, SINGAPORE Telex No: RS 21231

Letter,
Department of
Civil Aviation,
Singapore to
Chin International

25th February
1975

Messrs Chin International
20, Hooper Road
Singapore 9

Date 25 Feb 75

Dear Sirs

10

I refer to your letter dated 22 Feb 75.

2 As you are given an extension of the existing
Tenancy Agreement, I am of the view that the surcharge
should be made in accordance with sub-clause 1(2)(ii).
I shall be most obliged to receive your early payment of
the estimated surcharge due for the months Feb 1975 to
April 1975.

Yours faithfully

MARK ANTHONY WONG

for DIRECTOR OF CIVIL AVIATION
SINGAPORE

20

MAW/ma.

400258

The Director of Civil Aviation,
Singapore Airport,
Singapore - 19,
Republic of Singapore.

ATTN: MR. MARK ANTHONY WONG

Dear Sir,

We refer to your letter dated 25.2.1975.

Reference the 3 months' notice to quit, it is now with our solicitors.

10

Now that there is another concessionaire with perfume as an additional attraction, our business is affected, and our solicitor is now studying the surcharge matter, and will advise us. We shall then get in touch with you, meanwhile, our own opinion is that the previous 3 months' sales figure is no longer accurate for calculation of the estimated surcharge.

Yours faithfully,
CHIN INTERNATIONAL

C.L. CHIN

20

Managing Partner

k.l.

Exhibits

Agreed Bundle
of Documents in
the High Court
of the Republic
of Singapore

Letter, Chin
International to
Department of
Civil Aviation,
Singapore

(Undated)

Exhibits

Agreed Bundle
of Documents in
the High Court
of the Republic
of Singapore

DEPARTMENT OF CIVIL AVIATION
Singapore Airport, Singapore 19
Republic of Singapore

Telephone: 82321 Cable Address: AIRCIVIL, SINGAPORE Telex No: RS 21231

Letter,
Department of
Civil Aviation,
Singapore to
Chin International
4th March 1975

Messrs Chin International
20 Hooper Road
Singapore 9

4 MAR 75

WITHOUT PREJUDICE

Dear Sirs

10

I refer to your undated letter in reply to my
letter dated 25th February 1975.

2 I am prepared to accept the estimated surcharge
basing on the actual sales figures for February 1975.
Please note that the delay in payment of the said sur-
charge will render you liable for payment of interest
under Clause 2(ii) of the Tenancy Agreement.

Yours faithfully

MARK ANTHONY WONG

for DIRECTOR OF CIVIL AVIATION

20

MAW/bb

REC'D
ON 7/3/75

12th March 1975

The Director of Civil Aviation,
Singapore International Airport,
Singapore.

ATTN: MR. MARK ANTHONY

Dear Sir,

Thank you for your letter dated 4th March 1975.

We shall be meeting our solicitors before 15th March
1975 and they will be asked to write to you direct.

10 Yours faithfully,
CHIN INTERNATIONAL

C.L. CHIN

Managing Partner.

k. l.

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of Documents in
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of Singapore

Letter, Chin
International to
Department of
Civil Aviation,
Singapore

12th March 1975

Exhibits

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the High Court
of the Republic
of Singapore

Letter,
Department of
Civil Aviation,
Singapore to
Chin International

18th March 1975

DEPARTMENT OF CIVIL AVIATION
Singapore Airport, Singapore 19
Republic of Singapore

Telephone:
82321

Cable Address:
AIRCIVIL, SINGAPORE

Telex No:
RS 21231

Mr. C.L. Chin
Chin International
20 Hooper Road
Singapore 9

Our Ref: DCA/6/3

Date: 18 Mar 75

REGISTERED MAIL

Dear Sir

10

1 Your cheque of \$17,181.02 for the 1 month
estimated surcharge is acknowledged.

2 In accordance to the tenancy agreement, this
department is now insisting for the payment of the
estimated surcharge for the remaining 2 months.

3 Please be informed that interest is chargeable
for late payment under Clause 2(ii) of the said Tenancy
Agreement.

Yours faithfully

JOHN LOKE

20

for DIRECTOR OF CIVIL AVIATION

JL/l ds

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL
IN SINGAPORE

B E T W E E N :

CHIN AH LOY (Respondent) Appellant

- and -

ATTORNEY-GENERAL
(Appellant) Respondent

RECORD OF PROCEEDINGS

Messrs Baker & McKenzie
Aldwych House
Aldwych
LONDON WC2B 4JP

Tel: 01-242 6531

Ref: TJH

Solicitors for the Appellant

Messrs. Jaques & Co
2 South Square
Gray's Inn
LONDON WC1R 5HR

Tel: 01-242 9755

Ref: MJM/8147/0014/SLS

Solicitors for the Respondent