

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 35 of 1980

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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

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B E T W E E N :

PERDANA PROPERTIES Bhd

Appellants  
(Respondents)

- and -

10 UNITED ORIENT LEASING COMPANY  
Sdn. Bhd.

Respondents  
(Applicants)

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CASE FOR THE RESPONDENTS

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- |    |   | <u>Record</u>                        |
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|    | 1. This is an appeal, by final leave of the Federal Court of Malaysia (Wan Suleiman, Syed Othman, and Ibrahim Manan F.JJ.) granted on 4th August 1980, from a Judgment of the Federal Court dated 2nd April 1980, allowing an appeal by the Respondents from the judgment of the High Court at Johore Bahru (Anuar J.) in Originating Motion No. 33 of 1979.  | p. 85<br>p. 70<br>p. 1               |
| 20 | 2. By its Order dated 2nd April 1980, the Federal Court reversed the Order of the High Court dated 15th November 1979, and ordered the Appellants to return to the Respondents the goods belonging to the Respondent ("the goods") comprised in the two equipment lease agreements, dated respectively 13th April 1979 and 2nd May 1979, and made between (1) the Respondents and (2) Emporium President and Supermarket Sdn.Bhd. ("the Emporium"). | p. 75<br>p. 65<br><br>p. 13<br>p. 32 |
| 30 | 3. The proceedings were commenced by Originating Motion No. 33 of 1979, dated 23rd October, 1979, in the High Court of Malaya at Johore Bahru. The Respondents in this present appeal ("the Respondents") were the Applicants and the Appellants in this present appeal ("the Appellants") were   | p. 1                                 |

## Record

the Respondents. The object of the proceedings was to obtain an Order for the release of the goods from seizure, by way of distraint, effected at the instance of the Appellants, the Emporium's landlords, for unpaid rent.

4. The facts are straightforward. They may be stated as follows.

- p. 11 5. Down to 3rd September 1979, the Emporium was in possession of the goods, with the Respondent's consent, under the equipment lease agreements dated 13th April 1979 and 2nd May 1979. (This practice of leasing equipment is customary in the Emporium's trade of supermarket and emporium operators). 10
- p. 12 6. On 3rd September 1979, the Respondents' goods were  
p. 70 attached by an Order of the Subordinate Courts of Johore  
p. 87 Bahru at the instance of execution creditors of the  
p. 53 Emporium (not the Appellants). On the same day the  
Respondents served notice on the Emporium, in accordance  
with the provisions in that behalf contained in the equipment  
lease agreements, "assuming immediate possession" of the  
p. 63 goods. (The learned trial Judge in his judgment wrongly  
referred to the notice of 3rd September 1979 as having been  
given on 30th September 1979, an error which the Respondents say must have materially affected his decision). 20
- p. 71 7. On 4th September 1979, the Appellants took out a  
p. 87 warrant of distress, No. 9 of 1979, in the High Court at  
Johore Bahru, in respect of the goods already seized the  
previous day.
- p. 73 8. On 19th September 1979, on the application of the  
p. 86 Respondents, the learned trial Judge discharged the  
warrant of distress No. 9 of 1979 on the grounds that no  
order had been obtained under Section 5(1) of the Distress  
Ordinance 1951 for the issue of the warrant and that seizure  
of the goods was wrongful under Section 20(1) of that  
Ordinance. On the same day the Appellants took out a  
p. 73 second, i.e. the present, warrant of distress, No. 12 of  
1979, against the Emporium. 30
- p. 54 9. By letters dated 26th and 27th September 1979, M/s.  
p. 55 Ong Ban Chai & Razak, solicitors for the execution creditors  
who had originally attached the goods, requested the Sessions  
Court to release the goods to the Respondents in Johore  
Bahru Sessions Court Civil Actions Nos. 261 and 270 of 1979. 40  
The said solicitors were also the Appellants' solicitors.

10. On 22nd October 1979, the Sessions Court, after

- hearing objections by the Respondents against seizure of the goods, ordered the goods to be released to the Respondents. The said solicitors were present at the hearing. On the same day, the Respondents took possession of these goods from the Bailiff of the Sessions Court. But the Bailiff of the High Court, at the instance of the Appellants, and again on the same day, seized the goods from the possession of the Respondents in purported execution of the warrant of distress No.12 of 1979. p.7  
p.7  
p.89
- 10 11. The issues, upon these undisputed facts, between the Appellants and the Respondents, as the Respondents see them, are as follows.
12. First, whether by the notice of 3rd September 1979, the Respondents had withdrawn from the Emporium their consent and permission to its possession of the goods.
13. Second, whether the goods were in the reputed ownership of the Emporium when the present warrant of distress, No.12 of 1979, was taken out (on 19th September 1979) or later executed (on 22nd October 1979) by attachment of the goods in the possession of the Respondents. (The goods were sold by the Appellants on 6th December 1979). 20 p.7  
p.89
14. Third, whether the Appellants' solicitors' letters of 26th and 27th September 1979, to the Sessions Court requesting release of the goods to the Respondents should be treated as an admission on the part of the Appellants that the Respondents were entitled to possession of the goods. p.54  
p.55
15. Fourth, (this issue arises only if the first three issues are decided in favour of the Appellants) whether the custom of the Emporium's trade, of leasing such goods, excludes the operation of the doctrine of reputed ownership. 30 p.12
16. AND the Respondents humbly submit that this appeal should be dismissed with costs for the following among other

R E A S O N S

- 40 (1) BECAUSE on 3rd September 1979, the Respondents by the written notice served on the Emporium had withdrawn their consent and permission from the Emporium to its possession of the goods. (The misapprehension of the learned trial Judge, that this notice was

in fact given on 30th September 1979, must have led him to a wrong conclusion upon this point).

- (2) BECAUSE before or, at the latest, at the time the present Warrant of Distress, No.12 of 1979, was taken out on 19th September 1979, or executed on 22nd October 1979, the Appellants knew, or must be taken to have known, that the goods belonged to the Respondents and that the Respondents were at all material times claiming them as owners. 10
- (3) BECAUSE when the present Warrant was eventually executed on 22nd October 1979, by attaching the goods, the goods were wrongfully seized by the Appellants from the possession of the Respondents. The goods could not be said to be in the reputed ownership of the Emporium on the 19th September 1979 (when the present warrant of distress was taken out) or on 22nd October 1979 (when it was executed wrongfully). 20
- (4) BECAUSE by the letters dated 26th and 27th September 1979, written by the Appellants' solicitors to the Sessions Court requesting release of the goods to the Respondents, the Appellants must be treated as having admitted that the Respondents were entitled to the goods. (This was argued before but not dealt with by the learned trial Judge).
- (5) BECAUSE the custom of leasing such goods in the Emporium's trade excluded the operation of the doctrine of reputed ownership. 30
- (6) BECAUSE the judgment appealed from was right.

GERALD GODFREY

WONG KIM FATT

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COMPANY Sdn. Bhd.	(Applicants)

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CASE FOR THE RESPONDENTS

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