

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

BETWEEN:

- 1. SYED HUSSAIN BIN ABDUL RAHMAN
BIN SHAIKH ALKAFF ALSO KNOWN
AS SYED HUSSAIN BIN ABDUL RAHMAN
ALKAFF
 - 10 2. SYED ALWEE BIN MOHAMED BIN AHMAD
ALKAFF ALSO KNOWN AS ALWEE ALKAFF
 - 3. BRITISH & MALAYAN TRUSTEES LIMITED
(SUED AS TRUSTEES OF THE 1898
ALKAFF SETTLEMENT)
- Appellants
(Defendants)

- AND -

- 20 A.M. ABDULLAH SAHIB & CO.
(Suing as a firm)
- Respondents
(Plaintiffs)

CASE FOR THE APPELLANTS

- 30 1. This is an Appeal from a Judgment and
Order of the Court of Appeal in Singapore
(Order dated the 13th April 1984 and Grounds
of Judgment dated 4th September 1984), whereby
the said Court dismissed with costs an Appeal
from a Judgment of the High Court of the
Republic of Singapore given on the 11th November p.14
1983 which declared a Consent Judgment obtained
by the Appellants in the District Court in
D.C. Summons No.4416 of 1978 a nullity,
setting it aside and awarding to the
Respondents damages agreed at a sum of
50,000.00 Dollars. pp.25-26
pp.27-31
- 2. The Appellants are the Trustees of the
1898 Alkaff Settlement and were at all
material times the owners of the premises

known as 123-A and 123-B Market Street, Singapore (hereinafter referred to as "the premises").

pp.41-42 3. On the 28th August 1978 the Appellants initiated proceedings in the District Court in D.C. Summons No.4416 in which they claimed as follows:

- pp.43-44 "2. The premises were let to one A.A.Mohamed Maideen son of A.M. Abdullah Sahib on a monthly tenancy. The said A.A. Mohamed Maideen son of A.M. Abdullah Sahib carried on a business on the premises known as A.M.Abdullah Sahib & Co. and the rent receipts were issued in the name of the said firm. 10
3. In June 1978 the Plaintiffs learned that although a firm by the name of A.M.Abdullah Sahib & Co. was in occupation of the premises, the said A.A. Mohamed Maideen son of A.M. Abdullah Sahib was no longer the proprietor or even partner of the firm. 20
4. A letter dated 28th June 1978 was then written to the Defendants enquiring of the whereabouts of the said A.A. Mohamed Maideen son of A.M. Abdullah. The Plaintiffs did not receive a reply to the said letter. 30
5. Upon investigation the Plaintiffs learned that the said A.A.Mohamed Maideen son of A.M. Abdullah Sahib died in 1959. 40
6. By a Notice to Quit dated 28th June 1978 served on the Chief Justice, Singapore, the tenancy in the name of the said A.A. Mohamed Maideen son of A.M. Abdullah Sahib was terminated on 3rd August 1978 corresponding to the end of the Mohamedan calendar month of Sha Aban 1398. 50

7. The Defendants are in occupation of the premises.
8. The Plaintiffs say that the lawful tenancy affecting the premises having been duly determined, the occupation of the premises by the Defendants is that of trespassers and therefore unlawful.
- 10 9. The Plaintiffs are not precluded by any statutory provision from recovering possession of the premises.
10. And the Plaintiffs claim:
 - (a) Judgment against the Defendants for possession of the premises
 - (b) An order requiring the Defendants and all others in occupation to quit and deliver up vacant possession of the premises to the Plaintiffs
 - 20 (c) Mesne profits
 - (d) Costs
 - (e) Such further and other relief as to the Court may appear just."

4. By their Defence dated the 6th December 1978 the Respondents pleaded as follows:

- 30 "1. The Defendants are the lawful tenants of premises Nos. 123A and 123B Market Street, Singapore, mentioned in the Statement of Claim herein having obtained the tenancy of the said premises from Alkaff & Co.
2. With regard to paragraph 2 of the Statement of Claim the Defendants say that they are the lawful tenants of the said premises and have been so even before the said Alkaff & Co. entered into an agreement with the Defendants on the 26th April 1952. On the 26th April 1952 an agreement in respect of the said premises was entered into between Alkaff & Co. as landlords of the said premises and the Defendants as tenants thereof. The said Agreement was signed by A.M. Mohamed Maideen (son of A.M. Abdullah Sahib) as the then managing partner for and on behalf of the

pp.49-50

Defendants' firm. The Defendants therefore deny that the premises were let to the said A.A.Mohamed Maideen (son of A.M. Abdullah Sahib) who carried on business under the name of the Defendants' firm as alleged.

3. With regard to paragraph 3 of the Statement of Claim, the Defendants deny that the firm of A.M. Abdullah & Co. was ever in occupation of the said premises as alleged. 10
4. The Defendants contend that they have all along been the tenants of the said premises and prior to the commencement of these proceedings, the rent receipts were issued by the Plaintiffs in favour of the Defendants. The Plaintiffs are therefore precluded from denying that the Defendants are the lawful tenants of the said premises. 20
5. With regard to paragraphs 4, 5 and 6 of the Statement of Claim the Defendants say that as the tenancy was granted by the Plaintiffs in favour of the Defendants and the rent receipts having been issued in the name of the Defendants, the alleged Notice to Quit dated 28th June, 1978 served on the Chief Justice is bad in law and in fact and does not terminate the tenancy of the Defendants. 30
6. The Defendants admit paragraph 7 of the Statement of Claim and say they are in possession of the said premises as lawful tenants thereof. 40
7. With regard to paragraphs 8 and 9 of the Statement of Claim the Defendants say that as the lawful tenancy of the Defendants have not been lawfully determined the action by the Plaintiffs is misconceived and ought to be set aside. 50
8. Further and in the alternative, the Defendants deny that they are

trespassers and seek the protection of the Control of Rent Act (Cap.266)."

5. It was common ground that the said premises were premises within the meaning of the Control of Rent Act (Cap.266).

6. The Appellants and the Respondents arrived at a settlement and on the 18th December 1979 Judgment was entered by consent in the following terms:

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"UPON THIS ACTION coming on for hearing before His Honour Mr. Rahim Jalil in the presence of Counsel for the plaintiffs and for the defendants And Upon the Defendants admitting the claim of the plaintiffs

pp.57-58

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AND BY CONSENT IT IS THIS DAY ADJUDGED that there be judgment for the plaintiffs against the defendants for possession of the premises known as No.123A and 123B Market Street, Singapore

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AND IT IS ORDERED that the defendants, their servants and agents and all others DO QUIT AND DELIVER UP VACANT POSSESSION of the said premises to the Plaintiffs FORTHWITH

and the defendants DO PAY the plaintiffs mesne profits at \$102.00 per Mohamedan month as from Rajab 1398 (equivalent to 6.6.78) to date of delivery up of vacant possession"

A stay of execution was however granted upon the happening of certain events, one such event being a compulsory acquisition of the said premises by the Government.

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7. The Respondents remained in possession under the terms of the said consent Judgment. However on the 10th April 1980 a Notice under Section 8 of the Land Acquisition Act (Cap 272) was issued for the acquisition of the said premises. The Appellants lodged a claim for compensation made on the basis of vacant possession and the Collector of Land Revenue intimated that he required possession by the 3rd October 1980. The Appellants thereupon requested the Respondents to deliver vacant possession of the premises which the Respondents refused to do.

pp.61-62

p.64

p.67

8. The Respondents then initiated proceedings (Suit No.2881 of 1980) in the High Court against the Appellants seeking a declaration that the Consent Judgment is bad, invalid and unenforceable upon the following grounds:

p.5 ls.13-38

"(i) By reason of the Defence filed by the Plaintiffs (the Defendants in the said D.C. Summons) there was an issue in an action for possession as to whether or not the said premises were controlled premises. The said District Court had no jurisdiction to grant an order for possession unless the facts were placed before the said Court and the said Court had to be satisfied that it had jurisdiction under the proper sections or paragraphs contained in the said Control of Rent Act to grant an order for possession. 10
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(ii) The parties to an action for possession cannot by consent give any Court jurisdiction which the legislature has enacted that the Courts are not to have.

(iii) In the premises His Honour Mr. Rahim Jalil had no jurisdiction to give an order for possession and in consequence the subsequent leave to issue writ of possession based on that judgment was bad in law." 30

p.5 l.50-
p.6 l.9

They also sought an Injunction to restrain the Appellants from executing the consent Judgment by a Writ of Possession or alternatively damages for vacating the said premises. 40

9. In their Defence the Appellants pleaded as follows:

p.8 ls.8-31

"4. The Plaintiffs were represented by M/s Donaldson & Burkinshaw in the matter of the District Court Summons and at the hearing of the said Summons on 18th December 1979. The Plaintiffs admitted the claim of the Defendants in the said Summons and a Judgment by consent was 50

entered against them. In the said Judgment, the Plaintiffs expressly admitted the claim of the Defendants which was that the Plaintiffs, i.e. the present partners, were trespassers unlawfully in occupation and that the present partners of the Plaintiffs had never been tenants of the premises. The Defendants accordingly plead estoppel.

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5. Paragraph 6 of the Statement of Claim is not admitted. The only issue in the Subordinate Court action was whether the present partners of the Plaintiffs herein were on the premises as trespassers unlawfully in occupation or not, never having been tenants. The present partners of the Plaintiffs admitted they were trespassers unlawfully in occupation of the premises and were never tenants."

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10. The matter came up for hearing in the High Court on the 11th November 1983 when Wahab Ghows J. held as follows:

"I am bound by the Court of Appeal decision in Nanyang Gum Benjamin Manufacturing (Pte) Ltd v Tan Tong Woo & Ors (1978) 1 M.L.J. 233 and I hold that the D.C. order in D.C. Summons No.4416/78 is a nullity and is to be set aside. The Defendants shall pay the Plaintiffs in this case the sum of \$50,000/- by way of agreed damages. Costs of this action to the Plaintiffs."

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p.13 ls.16-24

11. The Appellants appealed to the Court of Appeal upon two principal grounds:

pp.15-21

(1) That the case of Nanyang Gum Benjamin Manufacturing (Pte) Ltd v Tan Tong Woo & Ors [1978] 1 MLJ 233 was distinguishable.

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(2) That the Learned High Court Judge erred in not giving effect to the defence of estoppel upon the authorities cited before him.

12. The Court of Appeal in their grounds of Judgment delivered by Thean J. on the 4th September 1984 rejected both grounds.

pp.27-31

13. It is respectfully submitted that they were wrong in so doing.

- (a) As regards the Nanyang case it is clear that it applies only as between a Landlord and Tenant where the issue is whether the premises, the subject matter of the action, may or may not be controlled premises. It is clear that it does not apply to a situation where the Defendant is a trespasser unlawfully in occupation of the premises. The Court of Appeal took the view that since the Defendants claimed that they were tenants and entitled to the protection of the Act, that matter was in issue. However, the Consent Judgment clearly shows (see para 6 above) that the Defendants admitted the claim of the Plaintiffs. It is respectfully submitted that that amounted to an abandonment of their Defence that they were tenants and indeed protected tenants and an admission they were trespassers in unlawful occupation. Consequently it is submitted that by their factual admission there was nothing in issue at the time of the Consent Judgment and the Control of Rent Act (Cap 266) had no application. 10 20
- (b) As to the estoppel point the Court of Appeal answered it by reference to Section 14 of the Control of Rent Act (Cap 266). With respect Section 14 does not provide an answer to the estoppel point since if the Defendants were trespassers, as they have admitted, then there is no landlord/tenant relationship and S.14 has no application. 30

pp.32-33

14. On the 9th July 1984 an Order was made granting the Appellants leave to appeal to the Judicial Committee of the Privy Council. 40

15. The Appellants respectfully submit that this Appeal should be allowed with costs for the following amongst other

R E A S O N S

- (1) BECAUSE the Consent Judgment was a valid Judgment.
- (2) BECAUSE the Consent Judgment specifically states that the Respondents admitted the claim of 50

the Appellants.

- (3) BECAUSE such admission involved abandonment of the Respondents' Defence that they were tenants under the Control of Rent Act (Cap 266) and an admission that they were trespassers in unlawful occupation.
- 10 (4) BECAUSE the Case of Nanyang is distinguishable on the basis that the Respondents were trespassers and there was no issue before the Court in this case as to whether or not the premises were subject to the Control of Rent Act (Cap.266).
- (5) BECAUSE the Consent Judgment was accepted by the Respondents who are estopped from asserting that it is a nullity.
- 20 (6) BECAUSE the Court of Appeal wrongly held that Section 14 of the Control of Rent Act (Cap 266) is an answer to the argument on estoppel.

EUGENE COTRAN

IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL

ON APPEAL

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AHMAD ALKAFF ALSO KNOWN AS
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3. BRITISH & MALAYAN TRUSTEES
LIMITED (SUED AS TRUSTEES OF
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Appellants
(Defendants)

- AND -

A.M. ABDULLAH SAHIB & CO.
(Suing as a firm) Respondents
(Plaintiffs)

CASE FOR THE APPELLANTS

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London EC2V 7LD
REF AMDW/1380/RA
Solicitors for the Appellants