

IN THE FEDERAL COURT OF THE REPUBLIC OF SINGAPORE

[1968] SGFC 4

CA Y42/1967

Between

United Overseas Bank Ltd

... Appellant

And

Sin Bian Sea Transport

... Respondent

GROUND OF DECISION

Landlord and Tenant — Recovery of possession

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United Overseas Bank Ltd v Sin Bian Sea Transport

[1968] SGFC 4

CA Y42/1967

M Buttrose J; Tan Ah Tah FJ; Wee Chong Jin CJ (Singapore)

05 June 1968

1 In this case the plaintiffs claim a declaration that the defendants are trespassers of that part of the premises known as No 6 Bonham Street, Singapore, which is at present occupied by the defendants, and an injunction restraining them from further occupying the said part. Alternatively the plaintiffs claim possession of the said part.

2 It is not disputed that the premises are subject to the Control of Rent Ordinance (Cap 242). One V Mathiapparanam, formerly trading as V Mathi & Co, was a monthly tenant of the premises from the year 1947. The learned trial judge found that a trade union called the Singapore Lighter Owners' Association (hereinafter referred to as the association) became the subtenant of Mathiapparanam on 27 September 1947 in respect of that part of the premises which is shaded green in the plan showing the premises which is annexed to the statement of claim. The learned trial judge also found that the defendants became licensees of the association during the year 1947 and in that capacity occupied part of the premises which is shaded green in the plan. It is convenient at this stage to state that in my opinion there is no reason to disturb these findings of the learned trial judge.

3 On 19 September 1958 Mathiaparanam was adjudicated a bankrupt and thereupon his contractual tenancy of the premises vested in the official assignee. The plaintiffs bought the premises from the previous owners on 22 May 1963. They duly determined the official assignee's contractual tenancy on 31 August 1963, by a notice to quit dated 31 July 1963. On 9 June 1965 they issued the writ of summons in this action against the defendants.

4 It was contended by counsel for the plaintiffs in the court below that the defendants were trespassers. The learned trial judge in his judgment reached the conclusion that the defendants were not trespassers and dismissed the claim for a declaration and injunction against the defendants. As regards the alternative claim for possession, the learned trial judge stated that he was not in a position to adjudicate upon it as the association had not been made a party to the action. It is against this judgment that this appeal is brought by the plaintiffs.

5 In my opinion, on the facts of this case, the association had already become a statutory tenant of the official assignee by the time the writ of summons was issued against the defendants.

6 It is important to note that there is no evidence whatsoever to show that the association's statutory tenancy has been lawfully determined. This point was not raised in the pleadings nor does it appear to have been argued in the court below.

7 At this stage, it becomes relevant to refer to ***Brown v Draper*** [1944] 1 All ER 246 in which it was held that in the case of a tenancy protected by the Rent Restriction Acts, the court has no jurisdiction to make an order for possession against a licensee unless the tenant is a party and an order is made against him as well. This case has been followed in Singapore in ***Weinberg v***

Lim Seow Peng [1955] MLJ 152 and ***Kassim bin Adam v Bandukwala GE*** [1958] MLJ 226 .

8 Counsel for the plaintiffs contends before us that where a statutory tenant is not in possession the court can find as a matter of law that the statutory tenant has lost the protection of the Control of Rent Ordinance if there is evidence that he is no longer in physical possession of the premises and has no ***animus revertendi***, even though the statutory tenant was not a party to the proceedings before the court and he relies on the case of ***Chartered Bank (Malaya) Trustee v Abu Bakar*** [1957] MLJ 40 in support of this proposition.

9 In that case certain premises known as 104 North Bridge Road, Singapore, which were rent-controlled premises, were let by the plaintiff company on a monthly tenancy to the firm of Mohamed Saiboo & Co which consisted of two partners Mohamed Salih and Abdul Majid. Various changes in the partnership took place and at the time the writ was issued the two partners were Abdul Majid and Abu Bakar, the defendant. Before the writ was issued a notice to quit was served on the original two partners Mohamed Salih and Abdul Majid requiring them to deliver up possession of the premises on 28 February 1955. The plaintiff company in due course commenced proceedings against the defendant Abu Bakar and in their statement of claim asked for a declaration that `the defendant by his servants or agents or otherwise is not entitled to possession of the premises No 104 North Bridge Road, Singapore`. It was admitted by the defendant that by 1954 Mohamed Salih was no longer a partner of the firm and that in June 1954 Abdul Majid absconded to India owing the partnership and other creditors a considerable sum of money.

10 On these facts the majority of the Court of Appeal held that the plaintiff company was entitled to the declaration it sought on the ground that the

defendant was not the licensee of Abdul Majid and that he could not be deemed to have held over after the determination of the contractual tenancy as Abdul Majid's partner, agent or licensee.

11 The facts of the present case are clearly different as the learned trial judge has found that the defendants were licensees of the association. In these circumstances, I am of the opinion that, as the association had not been made a party to the proceedings in the court below, the learned trial judge was right in refusing to make an order for possession against the defendants.

12 For the foregoing reasons I would dismiss the appeal with costs.

13 ***Appeal dismissed.***

M Buttrose J
Tan Ah Tah FJ
Wee Chong Jin CJ (Singapore)

KS Chung (Chung & Co) for the appellants
CS Wu (Donaldson & Burkinshaw) for the respondents
