IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1983] SGHC 1

DA 2/1981

Between

Empress Realty Pte Ltd

… *Applicant*

And

Empress Restaurant

… *Respondent*

GROUNDS OF DECISION

Landlord and Tenant — Termination of leases

Version No 1: 11 Sep 2026 (01:05 hrs)

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Empress Realty Pte Ltd v Empress Restaurant

[1983] SGHC 1

DA 2/1981
A P Rajah J
28 January 1983

1 This is an appeal by the plaintiffs/appellants against the decision of the learned district judge whereby he dismissed the plaintiffs` claim for possession against the third defendants/respondents, the claim for possession being that the third defendants were unlawfully in occupation of rent-controlled premises known as Nos 81 to 97 (odd numbers) Middle Road.

2 The action was commenced against three defendants namely: (1) Kwan Seng, (2) Low Kup and (3) Empress Restaurant (sued as a firm). The plaintiffs` claim for possession against the first and second defendants were on the grounds (1) that they had committed a breach of a condition of the tenancy under an agreement, dated 24 September 1954, between the liquidator of Eu Properties (Malaya) Ltd (in voluntary liquidation) of the one part and themselves, carrying on business in partnership with others under the style of Empress Restaurant and Bar at Nos 81 to 97 (odd numbers) Middle Road of the other part in that the plaintiffs (who had purchased the premises in 1963) or their predecessors in title had not given their consent in writing to the first and second defendants to assign, underlet or part with the possession or occupation of the premises to the

third defendants and (2) that under s 27(a) of the Control of Rent Act (Cap 266) they were not statutory tenants.

3 However, immediately before the trial began, counsel for the plaintiffs informed the court that the first and second defendants had died and nothing further was done by the plaintiffs in the action with regard to the named first and second defendants. The case proceeded only against the third defendants and the judgment of the learned trial judge concerned itself with the third defendants.

4 During the course of the trial it came to be known that the first defendant had died in 1955 and the second defendant in 1965 and this was not disputed then nor is it being disputed now.

5 The case for the plaintiffs was that the first and second defendants had sublet or assigned to the third defendants contrary to the provisions of the tenancy agreement. With regard to the tenancy agreement the plaintiffs contended that it created a tenancy only as between the first and second defendants and the liquidator and so brought about a joint tenancy as between the first and second defendants whereas the third defendants contended that, on a true construction of the said tenancy agreement as a whole, it was an agreement as between the liquidator and the third defendants and that, as there were at that time ten others, besides the first and the second defendants, who were partners in the firm, this operated to create a joint tenancy as between the first and second defendants and the other said ten partners.

6 Whatever be the true construction of the said tenancy agreement it is quite clear that the third defendants were holding the premises through the tenants, whoever they might have been, that is to say the first and second

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defendants or the survivor of them or the first and second defendants and the said ten partners or the survivor of them. It was not in dispute that the second defendant died, the later in time, in 1965. Mr Kirpal Singh, counsel for the appellants, conceded, and rightly so in my view, that when the second defendant died in 1965 his interest in the tenancy passed to his estate (this of course being on the assumption that counsel`s contention as to the true construction of the tenancy agreement being the correct one). As to who the other said ten partners were there was no evidence before the court. This being so, the tenant or tenants who had derived his or their interest in the premises either through the liquidator or his successors in title was or were not before the court. It follows, therefore, that in these circumstances the question of whether the third defendants are or were at any time unlawfully in occupation of the premises could not have been determined by the court one way or the other.

7 Further, the notice to quit on which this action is based is dated 15 November 1976 and is addressed to `Mr Kam Seng and Mr Low Kup, trading as Empress Restaurant & Bar`, some 11 years or so after the death of Low Kup. In my view this notice to quit, in the circumstances of this case, is ineffectual, irrespective of which of the two views one may take, as to the true construction of the tenancy agreement. It follows that at the time this action was commenced the contractual tenancy had not been determined.

8 For these reasons the appeal is dismissed with costs. ***Appeal dismissed***

A P Rajah J

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Kirpal Singh (Kirpal Singh & Co) for the appellants
Joseph Ang (Lee & Lee) for the respondents

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