IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1984] SGHC 20

DA 49/1982

Between

Lim Kim Kee

… *Appellant*

And

Kin Aik Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Landlord and Tenant — Creation of tenancy

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

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Lim Kim Kee v Kin Aik Pte Ltd

[1984] SGHC 20

DA 49/1982
T S Sinnathuray J
20 July 1984

1 This appeal relates to the recovery of possession of a rent-controlled terraced house, No 40 Petain Road (the premises). The respondents bought the premises some eight years ago. At that time, the appellant was already a tenant of the premises at a monthly rent of $49.60 payable in advance.

2 After the respondents became the owners of the premises, they caused an investigation to be made on the occupants of the premises. It was discovered that one Mdm Choo and her son were living in the front room of the first floor. She was paying the appellant $40 per month inclusive of PUB charges.

3 The respondents then brought these proceedings against the appellant. They obtained judgment in the district court for possession of the premises on the ground that the appellant had committed a breach of the provision of s 15(1)(g) of the Control of Rent Act (Cap 266) (the Act). The provision reads as follows:

> *where the tenant having sublet the premises or part thereof receives in respect of that subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per cent of*

> *the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him;*

4 At the hearing of the appeal, counsel for the appellant raised two submissions. First, he disputed the finding of fact of the learned district judge that the area occupied by Mdm Choo (including a canvas bed space on the ground floor where her son slept at night) was `a little more than one-eighth, certainly not more than one-fifth of the total area of the premises`. The other submission, which counsel said was not considered by the learned district judge, was that as Mdm Choo (and her son) had ceased to live in the premises before the respondents commenced these proceedings, the appellant was not in breach of s 15(1)(g) of the Act. Mdm Choo and her son left the premises in about August 1980; these proceedings were commenced against the appellant in September 1980.

5 I shall first deal with the second submission.

6 In support of his submission that even if there was a breach by the appellant, as the breach had ceased before the proceedings were brought, the respondents cannot sue on the breach, counsel for the appellant relied on the dictum of Barakbah CJ of Malaya in ***Che Esah & Anor v Che Limah*** [1966] 1 MLJ 36 . In delivering the judgment of the Federal Court, the learned Chief Justice at p 37 said: `In my view, therefore, as the law applicable was the law as it existed at the date of the hearing, and as the tenancy was then protected by the provisions of the Control of Rent Ordinance 1956, no order for possession could be made`. The issue in that appeal was whether a widow of a tenant of a rent-controlled house who had remarried and left the place but had later returned to live in it was a protected tenant under the Control of Rent Ordinance 1956. The facts were that after the tenant died, the tenancy was not terminated, no notice

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to quit was served on the legal representative of the deceased tenant or the Chief Justice. The only notice served was on the widow after she had resumed occupation of the house. It was in these circumstances that the Federal Court held that as at the date of the hearing the widow was in occupation of the house, she was protected by the provisions of the Control of Rent Ordinance 1956.

7 As I view the facts in ***Che Esah`s*** case, the widow was a protected tenant long before the date of the hearing of the action for recovery of possession in the sessions court. She had become a protected tenant when she resumed occupation of the rent-controlled house. The notice to quit served on her subsequently did not affect the status she had already acquired as protected tenant. In my view, this decision of the Federal Court has no application to the present appeal.

8 The law applicable to the facts in this appeal is to be found in the decision of the Federal Court in ***SEAC Co v Ang Ah Bak*** [1967] 1 MLJ 170 . In that appeal which arose from an action for recovery of possession of two floors of a premises, the argument before the Federal Court in Singapore was that as the tenant had stopped receiving a rent in excess of the maximum permitted under s 15(1)(g) of the Act before his contractual tenancy was terminated, he was not in breach of the said provision and the landlord was not entitled to possession. Chua J who delivered the judgment of the court, having reviewed several decisions given by the Courts in Malaya (there being no reported decisions in Singapore), held that the learned judge in the High Court was correct in holding that `a landlord`s right of action for recovery of possession arises immediately upon the tenant subletting at a rent in excess of the maximum permitted under para (g) of s 15(1)` of the Act.

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9 In the present appeal, when the contractual tenancy of the premises was terminated in October 1978, the appellant was not in breach of s 15(1)(g) of the Act. It was only after the appellant became a statutory tenant, when in May 1979 Mdm Choo moved into the premises and paid rent in excess of the maximum permitted under s 15(1)(g) of the Act that the appellant committed a breach of the provision of the Act. It was then that the cause of action for recovery of possession of the premises against the appellant vested in the respondents. In my opinion, it was at that point of time that the appellant lost the protection afforded to him as statutory tenant; thereafter he was no longer entitled to protection under the Act.

10 I now turn to the first submission. Counsel for the appellant agreed that, on the basis that the appellant retained possession of four-fifths of the premises, the learned district judge had correctly applied the formula for calculating the recoverable rent to ascertain whether the appellant had infringed s 15(1)(g) of the Act: see ***Hardial Singh v Lim Lye Huat*** [1960] MLJ 240 . I therefore do not have to review those calculations which entitled the respondents to obtain possession of the premises.

11 What was urged upon me was that I should review the findings made of the floor area of the premises occupied by the appellant after Mdm Choo had moved into the premises. The premises consists of a ground floor and a first floor. The ground floor is about 1,293 sq ft. The first floor is about 812 sq ft. It is smaller than the ground floor because of the air-well in the premises which is about 480 sq ft. The total floor area of the premises is therefore about 2,105 square feet. The learned district judge found as a fact that Mdm Choo occupied the front room on the first floor and that the floor area of the room was about equal in size to the other two rooms on the first floor. He also found that Mdm Choo`s son slept on a canvas bed on the ground floor occupying a floor space

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of about 18 square feet. By adding this bed space to the area of the front room of the first floor, the learned district judge found that `Mdm Choo and her son would have occupied a little more than one-eighth, certainly not more than one-fifth of the total area of the premises`. On those findings, to ascertain whether the appellant had infringed the Act, the learned district judge used for his calculations the figure most favourable to the appellant, that Mdm Choo occupied one-fifth of the premises.

12 The submission for the appellant was that as the learned district judge had found that Mdm Choo occupied half the floor area of the first floor, on the evidence that she had equal access to and enjoyment of the ground floor with the appellant and his family, he should have found that Mdm Choo was in exclusive possession of half or at least 40% of the whole of the premises. The evidence relied upon by counsel for the appellant was that of the appellant that Mdm Choo had access to the kitchen, toilet and bathroom in the premises; that she entertained her friends in the sitting room on the ground floor; that at times she ate with the appellant and his family in the dining room on the ground floor; and that she used the telephone and watched television downstairs. The point was made that had such a finding been made as submitted, on the formula already mentioned, the appellant would not be in breach of s 15(1)(g) of the Act.

13 Now, in his judgment, the learned district judge has stated that the first consideration he had was to find out, in proportion to the whole of the premises, how much space had been `let out` to Mdm Choo. In determining that floor area, he said: `Although she had access to other parts of the house, Mdm Choo only occupied the front room in the first floor`.

14 In my opinion, on the evidence before him, the learned district judge was right in holding that only the front room on the first floor was let to Mdm

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Choo because she had exclusive possession only of that room in the premises. Whilst Mdm Choo had access to the common areas in the premises, those areas were in fact, `retained` by the appellant and were `not sublet` to Mdm Choo (for the words in quotes, see s 15(1)(g) of the Act). Therefore, the learned district judge had rightly disregarded the common areas in the premises and the other evidence of the appellant which related to the gratuitous use by Mdm Choo of the ground floor of the premises in determining what part of the premises was sublet by the appellant to Mdm Choo.

15 For the reasons I have given, this appeal is dismissed with costs.

16 ***Appeal dismissed.***

T S Sinnathuray J

Goh Joon Seng (Chan, Goh & Co) for the appellant
Johua Lim (Lee & Lim) for the respondents

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