IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 50

Suit 2279/1991

Between

Kiang Huat Heng Kee

… *Plaintiff*

And

Lee Hin Private Limited

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Kiang Huat Heng Kee v Lee Hin Private Limited

[1994] SGHC 50

Suit 2279/1991
Chao Hick Tin J
28 February 1994

1 **Judgment:**

2 Coram: Chao Hick Tin J

3 **GROUNDS OF DECISION**

4 This was essentially an action to recover excess rent paid, pursuant to s.3(4) of the Control of Rent Act. The plaintiff had occupied the premises in question from 15 September 1972 to 28 February 1992. In view of limitation the amount claimed was confined to a period of six years immediately preceding the commencement of the action. The plaintiff was a partnership firm formed by one Quek Keng Song (Quek) (PW1) and another. Before 1972, it was operating a wholesale business in foodstuff such as onions, garlics and potatoes at a stall at "Lau Par Sat". In 1972 the government re-possessed the stall. Quek knew one Yeo Cheng Hong (Yeo) who was the chairman of the defendant company. He knew that the defendant had premises at No 76 Amoy Street which was vacant. On being told that the stall would be re-possessed by the government, Quek approached Yeo for help to let him have the use of No 76 Amoy Street (the said premises). The said premises was a three-storeyed, rent-

controlled building. It was not in dispute that the building was rent-controlled. The ground floor and the second storey were then vacant. The third storey was occupied by another person as a residence. The building belonged to Tan Jin Chwee & Co (Pte) Ltd. The defendant was the chief tenant. The person occupying the third storey was a sub-tenant of the defendant. Out of the friendship, and with a view to helping Quek, Yeo agreed to let Quek have the use of the ground floor.

5 Extent of premises used by the plaintiff On the evidence before me there was a dispute as to the extent of the ground floor which Yeo had agreed to let Quek have the use of and the true nature of the use. Yeo said that he had only agreed to let Quek use the front half portion of the ground floor. On the other hand, Quek said that it was for the entire ground floor. Be that as it may, the parties did enter into a written agreement in Chinese, dated 15 September 1972, the agreed translation of which reads:- " Whereas Lee Hin Company agrees to let the whole ground floor of No 76, Amoy Street to Chop Chien Huat for the purpose of using it as a store. Both parties agree to the following terms:

6 (1) Tenancy: Both parties agree that the tenancy shall be for 3 years commencing from 15th September 1972 to 15th September 1975. Upon expiry of the tenancy negotiation may be held.

7 (2) Rent: At agreed rent of $900.00 per month (water and electricity charges are to be shared with 2nd and 3rd floors with each paying half of the charges every month.)

8 (3) It is agreed that during the term of the tenancy when Chop Chien Huat is the tenant of the premises, if there is any interference by third party or

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any dispute regarding the tenancy, Lee Hin Company shall be fully responsible for it. (4) Both parties agree to this tenancy agreement.

9 Lest word of mouth bear no evidence, this tenancy agreement is hereby made in two copies with each party holding one copy as proof."

10 It should be noted that Lee Hin Company was the predecessor of the defendant herein. Both parties accepted that the conversion of Lee Hin from a firm to an incorporated company was immaterial to the issues in this action. Yeo explained that the agreement in Chinese was drafted by one of his employees. Unfortunately, it did not correctly reflect the true intention of the parties as it should have stated that only the front portion of the ground floor was to be used by Quek. Furthermore, Yeo contended that the parties did not intend to create a tenancy, only a licence for use was contemplated. However, beside the written agreement in Chinese, the receipts issued by the defendant also did not support Yeo's contention. The first receipt was stated to be in respect of "the whole ground floor of No 76 Amoy Street." The receipt for the deposit of three month's rental was stated to be in respect of "the entire ground floor". The subsequent receipts up to the expiry of the three-year period, were issued in respect of "the ground floor of No 76 Amoy Street." On the evidence I found that it was the intention of the parties to rent out the entire ground floor to the plaintiff. It could very well be that at the initial approach Quek might have told Yeo that he needed only the front portion of the ground floor. But as Yeo did not have any use of the ground floor premises at all, he did not mind letting the plaintiff have the whole of it. Thus, the written agreement expressly referred to the whole of the ground floor. It was, after all, a very brief agreement. Yeo would have read it and did not object to letting the plaintiff take the whole of the ground floor. This finding was consistent with the fact that the defendant had never gone back to use the back portion of the ground floor.

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11 Tenancy or licence As regards the question whether the arrangement was a tenancy or a licence, I would first observe that Yeo admitted that he did not know the difference between a tenancy and a licence. Second, the evidence showed that the plaintiff effectively had exclusive possession of the ground floor. He was given the keys to both the front door and the back gate. The plaintiff even made a new collapsible gate for the front door. He placed a signboard above the door. The defendant claimed he had a key to the back door. But at no time did the defendant seek to enter the premises. Quek said he changed the locks to the back door. I could well understand why Quek did that. It was for the security of his goods. Thus, I found that the plaintiffs had exclusive possession to the whole ground floor. Third, the written agreement and the receipts issued clearly contemplated a tenancy. In my opinion nothing in clause 3 of the written agreement in Chinese derogated from that. As I saw it, it merely imposed an obligation on the defendant to ensure that the plaintiff's enjoyment of the premises was not disturbed and it was the duty of the defendant to deal with such disturbances. Reliance was placed by the defendant on the fact that under the agreement with the owner, the defendant was prohibited from sub-letting. This fact was neither here nor there. It was significant that the plaintiff had even put up his own signboard and there was no objection from the defendant. The ultimate question was, did the arrangement here confer upon the plaintiff exclusive possession for a term at a rent: see Street v Mountford (1985) 2 All ER 289. The answer, in my view, was clearly in the affirmative.

12 First variation of terms of tenancy Reverting to the events of the case, on 15 September 1973, the 3-year tenancy expired. At that point, the rent for the tenancy was reduced to $800. Both parties gave different reasons why the rent was reduced. Quek claimed that it was because the defendant requested for the use of the rear portion of the ground floor. As a result the defendant had to agree

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to a reduction of the rent. Quek said that the defendant did store goods at the rear portion but he could not say at all what were the things that were stored there. But Yeo said that the reason for the reduction was because the parties agreed that henceforth the plaintiff would bear fully the PUB bills. The reduction of $100/- was to take into account that new arrangement. It would be recalled that under the written agreement in Chinese it was stated that water and electricity charges were to be shared between the plaintiff and the second and third floors with each party paying half the charges. During the first three years, the defendant paid the PUB charges and it in turn collected half of each PUB bill as a contribution from the plaintiff. It was not in dispute that since October 1975, the plaintiff had paid for the PUB bills and had not sought contribution from the defendant. The first time contribution was sought was in the statement of claim filed herein on 1 Nov 1991. It seemed to me totally inconceivable, if there wasn't the arrangement which Yeo claimed to have been made, that the plaintiff would not have asked the defendant to pay his half portion of the PUB bills. This went on not only for just a couple of months but some fifteen years. Quek said he was busy and had no time to ask the defendant for its contributions. I could not in all good sense accept that explanation. It appeared to me absurd to say that he had no time to collect the contributions for some fifteen years. An incidental aspect is this. To justify his assertion, Quek said he saw cartons and boxes being stored by the defendant at the rear portion of the ground floor. He or his partner was around when the defendant's articles were taken in and out as one of them had to open the door to the premises to allow the defendant's workers access thereto. I found it a little strange that Quek was not able to indicate at all what the defendant was storing at the rear portion (if that in fact occurred). Quek claimed that for a period of two years he did not even ask the workers what were in the boxes or cartons. I would have thought it natural to enquire from the workers what were in the cartons, if only for conversation.

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Counsel for the plaintiff contended that if it was in fact agreed that the plaintiff should bear the PUB charges entirely, why did the defendant not change the name of the account holder from that of their employee Yeo Kok Tong to that of the plaintiff. The answer may well be that the parties did not think it was necessary. It must not be forgotten that Quek and Yeo were good friends. This point was never put to Yeo for his explanation. On this issue, I felt on balance I should reject the version of Quek. I held that the reduction of the rent from $900 to $800 was because of the adjustment for the PUB charges. I was conscious that the receipts issued by the defendant for the period October 1975 to December 1977 were stated to be in respect of the front portion of the ground floor. This might seem to support Quek's contention. But this might well also be the defendant's way of correcting what he thought was a mistake (the extent of the initial renting). This aspect of the receipts was not put to Yeo for him to answer. Be that as it may, to say that for 15 years or so Quek was so busy as not to be able to collect PUB contributions from the defendant was just too much for me to accept when it could very simply be deducted from the rent to be paid!

13 Second variation of tenancy The next significant milestone in the relationship between the parties occurred on 1 January 1978 when the rent paid by the plaintiff to the defendant was raised to $2,000 per month. Here again, there was a dispute as to the reason for the increase. Quek said that as the defendant returned the use of the back portion of the ground floor to the plaintiff, the defendant demanded that the plaintiff pay an increased rent of $2,000. Quek claimed the defendant threatened him that if he did not agree to the increase, the defendant would let out the entire premises to others. He was, therefore, compelled into accepting this unreasonable demand. On the other hand, Yeo said that the increased rent to $2,000 had nothing to do with the return of the rear portion of the ground floor to the plaintiff. The increase was due to the fact

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that the plaintiff requested for the use of the second floor. Only about 10% of the space of the second storey was being used by the defendant to store some of their junks and the remaining 90% of the space was for the use of the plaintiff. The relevant receipts did not refer to the second storey, just "76 Amoy Street" or "storage rental". There was no consistency in the receipts issued. It was not in dispute that there was an internal staircase leading from the ground floor to the second floor which could be closed by way of a trap-door. Yeo said that the trap-door was never locked. Quek denied that he had ever used the second floor for storing his goods. He claimed that the trap-door was locked and he had no access to the second floor. This question of fact whether the $2,000 was paid for not only the use of the ground floor but also of the second floor, was crucial to this action. The plaintiff contended that, by virtue of the written agreement in Chinese, the standard rent for the entire ground floor was $900 and it was illegal for the defendant to have received rent in excess of $900. Accordingly, the defendant should refund the excess to the plaintiff pursuant to s.3(4) of the Control of Rent Act. I accepted Yeo's evidence that the original understanding to rent out the premises, and the subsequent variations, were all concluded by him and Quek orally. I accepted that Yeo was frequently away on business. I found it hard to believe Quek when he claimed that Yeo had unreasonably demanded that he pay $2,000 rent per month for the use of the ground floor only. If Yeo had been such an unreasonable person, I could not understand why Quek kept sending gifts to Yeo at every Chinese New Year from 1972 to 1991 without fail. This annual gesture could only signify one thing: that Quek was grateful to Yeo. Quek himself admitted that they were good friends. This conduct of Quek was inconsistent with his claim that Yeo had not been reasonable or was an unscrupulous person. I could only conclude that the plaintiff had agreed to the increase because of the additional space being used by him. The rent increase was not insignificant. Such an increase could only be

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explained on the ground that the plaintiff had obtained some additional benefits. And if Yeo had indeed been such an unreasonable person, why did he agree to reduce the rent by $200 to $1,800 per month with effect from February 1981. Yeo said that he agreed to this reduction because Quek requested for it due to poor business. That remained the rent paid by the plaintiff to the defendant until 1991, when the owner of the building discovered the sub-letting and sought to re-possess the premises. This did not appear to me to be the behaviour of an unreasonable landlord. All these were entirely consistent with Yeo's version as to the reason for the increase in rent to $2,000. In addition, there was one other factor which I thought was significant. This was the evidence of the solicitor for the owner of the building, Mr Ho Nee Min. In answer to a question in re-examination, following a question put by the court, he said that on 16 October 1991 he went to inspect the premises with his client. Both the ground and the second floors had been completely vacated. He went up to the second floor which was dark. The windows were all closed and boarded up. He noted the smell of some dry foodstuff. He said that the onion smell on the second storey was very strong. In his submission counsel for the plaintiff tried to explain that it was probable that the smell came "from the ground floor via the openings, in particular the air well and was trapped within the second storeyed premises." At best this was speculative. There was no evidence to indicate when the windows of the second storey were boarded up; and if the windows were in fact so closed and boarded up for sometime and if the trap-door leading from the ground floor to the second storey was always closed and locked as claimed by Quek, how was it that the second storey could have such a strong smell of onions. There was evidence before me that the plaintiff used fans in order to ventilate the store-room and prevent the foodstuff from deteriorating. The foodstuff had to be kept dry. In the words of Yeo "otherwise shoots would come out" of the onions. I found that in all likelihood the second floor had been used for so many years for

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storing and drying onions and other foodstuff, so much so that anyone who went up to that level could not avoid being overwhelmed by the very strong smell as Mr Ho had encountered. This evidence of Mr Ho clearly corroborated the evidence of Yeo when he said that the plaintiff had been using the second storey to store and ventilate garlics and onions. It was not in dispute that the defendant never traded in such foodstuff. In the result I held that the plaintiff did request for and was allowed the use of 90% of the space of the second storey for its business. In coming to this decision I have disregarded whatever hearsay evidence that might have come out of the mouths of witnesses. I also held that the $2,000 rental (subsequently reduced to $1,800) was paid for the use of both the ground and the second floors (up to 90% thereof). As the $2,000 rental was for the combined use of whole of the ground floor and approximately 90% of the second floor as one entity, that was a separate letting and the $2,000 per month was the standard rent for the totality of the aforesaid areas: see Lim Tai Tin v Services Ltd < 1965 > 1 MLJ 91 and Hin Seng & Co v SEAC Co < 1963 >29 MLJ 109. For the above reasons, I held that the plaintiff was not entitled to a refund of any alleged excess rent paid for the period August 1985 to April 1991. There was in truth no excess rent to be recovered.

14 As regards the deposit paid by the plaintiff to the defendant, it was not denied that that had not been refunded to the plaintiff. The defendant did not dispute the same should be refunded but claimed that in view of its counterclaim, it was entitled to a set-off.

15 Counterclaim There remains the question of the counterclaim of the defendant. Since 1 May 1991 the plaintiff had ceased to pay the defendant the rent of $1,800 per month. This fact was not disputed. The defendant claimed a total of $18,000, being the rent for 10 months, from 1 May 1991 to 29 February 1992, the latter being the date on which the plaintiff, having reached a settlement

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with the owner of the premises, vacated the premises. On or about 16 May 1991 the owner of the premises commenced an action in the High Court against both the defendant and the plaintiff for the recovery of the possession of the premises on the grounds that the defendant (i) had sub-letted the premises or part thereof without the consent of the owner and (ii) had sub-letted it at a rent in excess of 110% of the rent paid by the defendant to the owner. A settlement was later reached between the defendant and the owner whereby the defendant agreed to vacate the premises by 30 September 1991, and a consent judgment to that effect was obtained by the owner against the defendant. However, the plaintiff did not vacate the premises until the end of February 1992, following a settlement reached with the owner. It seemed to me clear that the defendant ceased to be the landlord of the plaintiff with effect from 1 October 1991. No rent was thereafter due from the plaintiff to the defendant. Hence, the plaintiff was only liable to pay the defendant rent for up to 30 September 1991, a period of five months.

16 Judgment

In the result, I held that the plaintiff failed in its main claim for the alleged excess rent. It also failed in its claim for contributions in respect of the PUB bills. The plaintiff would only be entitled to a refund of the deposit of $2,700. Judgment was entered in favour of the defendant on the counterclaim for $9,000. The plaintiff would have to bear the costs of the action. There would be no separate costs for the counterclaim.

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Peter Chua (Peter Chua Sobaran & Partners) for the plaintiff
Serene Chan (Tan Lee & Choo) for the defendant
