IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 235

OS 637/1994

Between

Mario-Ville Boarding House Pte Ltd

… Plaintiff

And

Pulau Properties Pte Ltd

… Defendant

GROUNDS OF DECISION

Evidence — Proof of evidence; Landlord and Tenant — Creation of tenancy; Landlord and Tenant — Creation of tenancy

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Mario-Ville Boarding House Pte Ltd and Others v Pulau Properties Pte Ltd

[1995] SGHC 235

OS 637/1994
S Rajendran J
09 October 1995

1 In the late fifties, premises known as 64 Lloyd Road (the premises) had been let out to a company known as Entertainment Enterprises Pte Ltd (EE). EE operated a hotel/boarding house called Atomic and also ran a restaurant at the premises. The owners of the property at that time were Lee Kong Chian Pte Ltd, a company associated with the Lee Rubber group of companies. It would appear the EE was also a company within that group.

2 Kao Pe Loong (Kao), now in his late seventies, was at that time a school teacher. Kao learnt that EE wanted to give up the business of Atomic. Kao approached Mr Lee Kong Chian and obtained Mr Lee`s approval in principle to EE subletting the premises to Kao for Kao to operate a boarding house/restaurant business at the premises. Mr Lee referred Kao to one Mr Tan King Kow, the then property manager for the group, and the details of the sub-tenancy were agreed upon. Kao asked that the sub-tenancy agreement be in the name of his wife Martha Kao (Martha). This was agreed and the sub-tenancy agreement was signed on 2 April 1960.

3 It was Kao`s evidence that he did not sign the sub-tenancy in his name because as a civil servant he did not want to take the sub-tenancy or run the business in his name but at his request a provision was inserted in the sub-tenancy which specifically authorized `the sub-tenant`s husband` to be the executor of a power-of-attorney to evict residents at the premises or to rescind such licences at the said premises as he deems fit. It was a term of the agreement that the sub-tenant was to be responsible for maintaining the premises in good repair.

4 After procuring the sub-tenancy, Kao and his wife lived at the premises and operated a boarding house/restaurant business thereat as a family concern. The boarding house was known as the Mario-Ville Boarding House. The capital required for the business including the capital required to repair the premises was provided solely by Kao. The licence under the Hotels Ordinance to run a hotel at the premises was initially in the name of Martha but, after her death in January 1975, was in the name of Kao.

5 Kao had two sons by Martha. In 1976, Kao married his present wife, Theresa. He has two daughters by Theresa, Cecila Kao Wai Mind and Juliana Kao Wai Yee. In 1986, a private limited company known as Mario-Ville Pte Ltd was incorporated by Kao and it took over the business of Mario-Ville.

6 On 11 July 1989, Selat Pte Ltd (SPL) (previously known as Lee Kong Chian Pte Ltd), the landlords of the premises, commenced proceedings in DCS 3778/89 against EE as the first defendants and, inter alia, Kao, Kao Pe Loong trading as Fortune Sea Restaurant and Bar, Kao Kelvind and Mario-Ville Boarding House and Mario-Ville Boarding House Pte Ltd for possession of the premises. Against EE it was alleged that the tenancy agreement by which the

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premises were let to EE prohibited subletting and that EE was no longer a tenant of the premises; against the other defendants it was alleged that they were trespassers unlawfully in occupation of the premises. The defendants were at that time represented by another firm of solicitors. On 10 August 1989, SPL applied for and obtained on an ex parte basis an order for interim injunction restraining the defendants from entering the premises. On 5 September 1989, judgment under O 14 was entered against EE in the said district court suit.

7 In 1990, the present solicitors for the defendants took over the conduct of the defence in the district court suit and applied for the discharge of the injunction against the defendants. On 12 April 1990 the interim injunction was, by consent, discharged.

8 Pulau Properties Pte Ltd (the defendants herein) meanwhile became the owners of the premises. Pulau Properties applied to the Tenants` Compensation Board (the Board), under s 4 of the Controlled Premises (Special Provisions) Act (Cap 60), for recovery of possession of the premises. Pursuant to this application, a number of parties sought compensation under the Act. Amongst them were the plaintiffs herein. The Board classified and considered the claims under three groupings, namely (a) Kao Pe Loong, Theresa, Cecila and Juliana; (b) Kao Pe Loong trading as Fortune Sea Restaurant and Bar; and (c) Mario-Ville Boarding House Pte Ltd; and ruled that none of the claimants were eligible for compensation under the said Act as none of them were either tenants or sub-tenants of the premises falling within s 10 of the Controlled Premises (Special Provisions) Act (Cap 60). The reasons for this ruling were given in a grounds of judgment dated 5 April 1995. Dissatisfied with this ruling the plaintiffs took out this application under s 18(1) of the said Act for this court to review the decision of the Board and remit the case back to the Board for assessment of the

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quantum of compensation. Theresa, Cecilia and Juliana are not parties to these proceedings.

9 The facts as stated above were in the main not disputed before the Board. The defendants, however, objected to the admissibility of the evidence given by Kao that the sub-tenancy had been negotiated by him for his own benefit and that Martha was only nominally the sub-tenant. The objection, based on ss 93 and 94 of the Evidence Act (Cap 97, 1990 Ed), was on the grounds that the effect of such evidence would be to vary or contradict the clear terms of the sub-tenancy agreement. The Board upheld this objection. Its reason for doing so appears in the following passage of its judgment:

> *From* ***Higgins` case*** *as well as* ***Danziger`s case****, the following principles of law can be elicited:*
>
> *(i) A party to a written agreement who appears on the face of the agreement to be contracting in his personal capacity is precluded from adducing parol evidence to show that he had signed the agreement as an agent of and on the authority of his principal and that the other contracting party was aware of this arrogant order to absolve himself from liability.*
>
> (ii) It is open to a contracting party to introduce evidence to show that apart from the contracting party to the agreement, a third person is also liable to him under the contract as the contracting party had signed the agreement as the agent and on the authority of the third person.
>
> *If the two principles of law stated above were to be applied to the situation before the Board, it would mean that on the one hand, the law does not allow Martha Kao to adduce evidence to show that she is not liable under the Agreement as she had executed it as an agent of and on the authority of her principal, Kao. On the other hand, it would be permissible for the landlord to show that in addition to Martha Kao, the contracting party, a third person is also bound by the terms of the contract as Martha Kao had entered into the agreement as agent of that person on his authority. However, the question before the Board is whether the law permits Kao who is not a contracting party to the agreement to adduce evidence to show that he was the sub-tenant or a joint sub-tenant as he was the principal of the contracting party, Martha Kao for the purpose of making a claim for compensation*

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> *as a sub-tenant under the Control Premises (Special provisions) Act. Having regard to s 93 of the Evidence Act and the case authorities, the Board held that Kao was not permitted to adduce such evidence for the said purpose.*

10 Counsel for the plaintiffs had no quarrel with the two principles of law set out in the judgment, but what counsel did fault was the conclusion of the Board that whilst it was permissible for the landlord to show that in addition to Martha a third party was bound by the terms of the contract, it was not permissible for the third party to hold the landlord to the contract on the same footing. Counsel submitted that the doctrine of the undisclosed principal acted both ways and that the Board erred in law in holding that it applied only one way. In support of this proposition, Counsel referred to ***Boustead on Agency*** (15th Ed, 1985), p 312 which reads:

> *79(1) An undisclosed principle* ***may sue*** *or be sued on any contract made on his behalf, or in respect of money paid or received on his behalf, by his agent acting within the scope of his actual authority.*
>
> (2) …
>
> (3) Where an agent enters into a contract, oral or written, in his own name, evidence is admissible to show who is the real principal, in order to charge him ***or entitle him to sue*** on the contract.

11 This was also the view taken in ***Higgins v Senior*** (1841) 8 M & W 834; 151 ER 1278, relied on by the Board. There Baron Parke said at p 1282 of the report:

> *There is no doubt, that where such an agreement is made, it is competent to show that one or both of the contracting parties were agents for other persons, and acted as such agents in making the contract, so as to give the benefit of the contract on the one hand to (* ***Garrett v Handley*** *4 B & Cr 664;* ***Bateman v Phillips*** *15 East 272), and charge with liability on the other (* ***Paterson v Gandasequi*** *15 East 62), the unnamed principals: and this, whether the agreement be or be not required to be in writing by the Statute of Frauds: and this evidence in no way*

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> *contradicts the written agreement. It does not deny that it is binding on those whom, on the face of it, it purports to bind; but shews that it also binds another by reason that the act of the agent, in signing the agreement, in pursuance of his authority, is in law the act of the principal.*

12 But, on the other hand, to allow evidence to be given that the party who appears on the face of the instrument to be personally a contracting party, is not such, would be to allow parol evidence to contradict the written agreement; which cannot be done.

13 In ***Epps v Rothnie*** [1945] KB 562, the question arose whether it was open for a person to assert that he was in fact the landlord of certain premises when the tenancy agreement entered into in respect of those promises was by someone else who in that agreement was referred to as landlord. Scott LJ in dealing with the issue said:

> *The second answer to the contention is that the agreement was an ordinary agreement in writing and even if the plaintiff was compelled to rely on it, evidence would have been admissible on ordinary principles applicable to any contract in writing, to prove that the person signing it as a contracting party, was acting for an undisclosed principal. Two old cases were cited to us in which the view was taken that the particular contract under consideration was expressed in such terms as to prevent the application of the ordinary principles of agency with regard to an undisclosed principal, with the result that the parties were tied down to an agreement between the persons signing the document and no one else. Those cases were* ***Humble v Hunter*** *and* ***Formby Brothers v Formby****. Both these cases have been discussed on many occasions and I venture to express the opinion that they can no longer be regarded as good law, a view which is, I think, justified by the observations made on them by Lord Sumner in* ***Fred Drughorn, Ld v Rederiaktiebolaget Trans-Atlantic****. I think the appeal fails on both the points argued before us, and must be dismissed.*

14 Counsel also cited a number of other cases to support his submission that an undisclosed principal may not only be sued but can also sue on a contract.

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I need not review those authorities. In my view, it was permissible for Kao to adduce evidence to show that he was either tenant of the premises or a joint tenant of the premises and that when Martha signed the sub-tenancy she was doing so as his agent. Such evidence did not, in my view, amount to a contradiction or variation of the sub-tenancy agreement and s 94 of the Evidence Act did not preclude such evidence from being admitted. If Martha was sued by the landlord and she sought to deny that she was a tenant the position would be different and s 94 can properly be invoked. I would also note that counsel for the defendants in his submission before me did not seek to support the ruling of the Board that the evidence was not admissible.

15 Counsel for the defendants, whilst not seeking to support the ruling of the Board on this aspect of the case urged this court not to interfere with the decision of the Board since there was other evidence before the Board which supported the Board`s conclusion that Kao was not a tenant of the premises. In particular, he relied on the affidavits filed by Kao in the district court suit referred to above where Martha was described as tenant; the estate duty affidavits filed after Martha`s death where Kao had described Martha as the sub-tenant of the premises and in a licence agreement with the Singapore Ballet Academy to use part of the premises, where Martha was named as the tenant of the premises. Alternatively, Counsel for the defendants urged this court to remit the case back to the Board for the Board to make its findings afresh after considering Kao`s evidence that his wife only signed the sub-tenancy agreement as his nominee.

16 It seemed to me quite apparent that in the affidavits and other documents relied on by the defendants Martha had been described as sub-tenant because that was what the sub-tenancy agreement in fact said. The issue whether Kao

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had any interest as tenant of the premises was, except in respect of the estate duty affidavit, not in issue at that time. Kao`s then-counsel who prepared the affidavits filed in the district court testified before the Board that Kao had given him a copy of the sub-tenancy agreement and it was from the sub-tenancy agreement that he came to the conclusion that Martha was the sub-tenant and drafted the affidavits accordingly. He had not applied his mind to the question whether Kao had any interest in the tenancy. When the present solicitors of the plaintiffs took over the conduct of the district court suit, the affidavits filed by Kao were reviewed and the fact that Martha signed the sub-tenancy agreement as agent of Kao was placed before the district court.

17 Whether Kao was himself a tenant or joint tenant of the premises is a fairly complex matter of law. Failure by Kao in his initial affidavits in DCS 3778/89 and in the estate duty affidavit to appreciate his precise legal status in the sub-tenancy of the premises cannot form the basis on which an adverse inference can fairly be made against him. Having ruled that the evidence of Kao as to how Martha came to sign the sub-tenancy agreement was inadmissible, the only evidence left before the Board on this question was the documentary evidence. The Board accordingly adopted the documentary evidence and held that Martha was the sub-tenant and that Kao had no tenancy interest in the premises.

18 The evidence of Kao as to how Martha came to sign the sub-tenancy agreement was unchallenged when it was given. On this unchallenged evidence it was apparent that Kao was at the very least a joint-tenant of the premises. It was also not in dispute before the Board that Kao was in continuous occupation of the premises from 1960. Kao was, therefore, not precluded by s 10 of the Controlled Premises (Special Provisions) Act (Cap 60), from obtaining

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compensation. There is no doubt in my mind that had the Board ruled the evidence of Kao to be admissible, the Board would also have come to this conclusion.

19 The first plaintiff, Mario-Ville Boarding House Pte Ltd had been incorporated only in 1986 and by reason of s 10(1)(a) of the Act Mario-Ville Boarding House Pte Ltd would not be entitled to compensation as it had not been in continuous occupation of the premises from a time prior to 1 January 1968. As the business of the first plaintiff was part of the family business carried on at the premises by Kao, its claim would be no more than part of Kao`s claim of having carried on business at the premises since 1960. The claim of the second plaintiff Kao Pe Loong (trading as Fortune Sea Restaurant and Bar) was not an independent claim. It was no more than part of Kao`s claim.

20 On the facts of this case I did not consider it necessary to direct the Board to make its findings afresh. I set aside the decision of the Board denying Kao his claim for compensation under the Act and directed the Board to assess the compensation payable to him.

21 Application allowed.

S Rajendran J

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