IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 200

District Court Appeal No 81 of 1995

Between

Printpak Productions (S) Pte Ltd

… Plaintiff

And

Overseas Marketing(S) Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Printpak Productions (S) Pte Ltd v Overseas Marketing(S) Pte Ltd

[1996] SGHC 200

District Court Appeal No 81 of 1995
T S Sinnathuray J
12 September 1996

1 **Judgment:**

2 ORAL JUDGMENT

3 This is an appeal against the decision of the learned District Judge who by an order of court dated 19 December 1995 ordered that the defendants' application to set aside the writ of distress herein be dismissed and further ordered that the defendants do pay the plaintiffs' costs of this application fixed at $1,500.00. It is necessary now for me to refer to the facts that gave rise to this order of court.

4 On 22 September 1995 the plaintiffs (hereinafter referred to as the landlords), applied by way of ex parte originating summons for leave to issue a writ of distress. They filed a supporting affidavit which sets out the grounds on which they were making the application for the writ of distress. On 23 September 1995, the court made an order that the writ of distress be issued against the defendants (hereinafter referred to as the tenants) to levy the amount of $10,800 being the rent due by the tenants to landlords for the months of

August and September 1995 payable in advance every month in respect of the premises situated on the second floor of 7 Kim Chuan Lane (hereinafter referred to as the premises).

5 The writ of distress was issued on that same day, 23 September 1995, and was executed on 29 September 1995. On 11 October 1995, the tenants took out a Summons-in-Chambers entered as No 12922/95 for an order, amongst other orders, that the writ of distress issued herein against the tenants pursuant to the order of court be set aside and/or suspended.

6 The supporting affidavit of the tenants raised several matters of facts. Essentially, it was maintained that the tenancy had been determined on 7 July 1996 by a letter from the tenants to the landlords. In response to this affidavit the landlords filed an affidavit on 12 October 1996 disputing that there had been a termination of the lease and, in essence, they took the stand that under the tenancy agreement there cannot be a unilateral termination of it. It is clear from these two affidavits that there was some dispute relating to the tenancy.

7 The matter came for hearing before the learned District Judge, who after having heard the parties, adjourned the matter for evidence to be given by the landlords and the tenants. There is nothing in the record of appeal to show why this hearing was held.

8 Today at the hearing of this appeal, Mr Tan Cheng Yew for the tenants, has referred me to s 17 of the Distress Act (Cap 84) to say that the learned District Judge had heard the matter under this section. As I read this section, it is clear that he could not, in my view, deal with the matter under s 17 for this gives power to the Judge to deal with matters arising on an application for the release of any property restrained. This section provides that the judge may deal

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with such an application summarily. And, as to what his powers are in those circumstances, one of which is that he can order an issue to be tried. The record of appeal however shows there was no issue ordered to be tried and, in any event, this was not an application for the release of the property restrained. The summons-in-chambers, as I have said, was for an order that a writ of distress be suspended or set aside on the ground, as I have understood this appeal, that there were no (a) arrears of rent; and (b) that the tenancy had been determined. So, clearly the learned District Judge had not dealt with the matter under s 17.

9 Next, one serious difficulty in this case is that it is not clear from the record of appeal whether s 5(3) of the Distress Act had been brought to the notice of the learned District Judge in the proceedings had before him. To me, it seems crucial for s 5(3) provides as follows:

10 5(3) Arrears of rent may be restrained for after the determination of the tenancy, provided that either the tenant is still in occupation of the premises in respect of which the rent is claimed to be due, or any goods of the tenant are still on the premises.

11 This section provides that even after the tenancy has been determined the landlord is empowered to levy distress in one of two circumstances:

12 (1) Where the tenant is still in occupation of the premises.

13 (2) Where the tenant has left the premises but his goods are still on the premises.

14 It would follow that the circumstances in which an application may be made to stay the proceedings of a writ of distress are indeed limited. In the

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present case, where it is the contention for the tenants that the tenancy which existed had already been determined, that is an issue which, in my view, the tenants must have it resolved in a landlord and tenant proceedings and not one that can be taken in a case where a writ of distress has been issued.

15 However, it is argued for the tenants that there has to be arrears of rent before a writ of distress can be issued. On this the tenants say that there are no arrears of rent because by the letter of 3 July they had terminated the tenancy and it is for that reason there are no arrears of rent. However, for the landlords there is the affidavit filed for the application for the writ that there is a tenancy agreement and that rents for August and September had not been paid. Moreover, the landlords maintain that at all material times when rent was due the tenants' goods of some value were on the premises. Hence, the tenants cannot prevent the landlords from selling the goods found on the premises. I agree. The short answer is that found in s 5(3) and that is, so long as rent is in arrears and the tenants' goods are in the premises, the landlords can levy distress.

16 Much argument had been addressed in the lower courts and had been dealt with by the learned District Judge and repeated again before me in this appeal by Mr Tan for the tenants on the issue of whether the tenancy had been determined. I regret to say that on the factual matrix of this case I am of the view that these arguments cannot arise for consideration on an application to set aside or to stay a writ of distress. In any event, I accept the findings of fact made by the learned District Judge that the tenancy had not been determined, that there were arrears of rent, and, therefore, the application to set aside the writ of distress was properly dismissed by the court below. In those circumstances, the appeal must be dismissed with costs.

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17 T S SINNATHURAY

JUDGE

T S Sinnathuray J

Tan Cheng Yew (Tan Cheng Yew & Partners) for the appellants
Bala Chandran (Mallal & Namazie) for the respondents
