IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 199

Suit 1698/1996

Between

Rubycon Singapore Pte Ltd

… Plaintiff

And

Setron Limited
La-Belle Knitting Factory Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Rubycon Singapore Pte Ltd v Setron Limited and Another

[1998] SGHC 199

Suit 1698/1996
Kan Ting Chiu J
09 June 1998

1. This action arose out of a fire on 20 January 1995 at the Setron Building at Dundee Road, Singapore.

2. The Plaintiff was the occupant of the first, fourth and fifth levels and a part of the third level of the building. They were in occupation under four similar tenancy agreements. The First Defendant, the landlord, held a lease on the land and building dated 5 November 1975 from the Housing and Development Board. The Second Defendant was a tenant of the second level of the building.

3. The Plaintiff claimed that smoke and heat from a fire at the Second Defendant's premises damaged its property on the third and fourth levels and water used to put out the fire damaged its property on the first level.

4. The Plaintiff sued both Defendants and obtained judgment against the Second Defendant in default of appearance.

5. The Plaintiff sued the First Defendant on contract and tort. It claimed that the First Defendant had breached clause 3.1 of the tenancy agreements The clause provided

That the Tenant upon duly paying the rent and other payments hereby reserved and observing and performing the several obligations and stipulations herein on their part contained shall peaceably hold and enjoy the Premises during the term hereby created without any disturbance by the Landlord or any person lawfully claiming under or in trust of the Landlord.

6. The Plaintiff alleged that the First Defendant breached in covenant in two ways. Firstly it permitted or acquiesced to the cooking on the Second Defendant's premises, and secondly, it failed to provide compartments with fire-rated doors for the switch room and electric riser areas in breach of the Code of Practice for Fire Precautions in Buildings 1991.

7. The allegations relating to the omission of the compartments and fire-rated doors were added on the second day of the trial on 11 March 1998. I allowed these amendments because the Plaintiff had no knowledge of these matters until 9 March when the First Defendant gave discovery and inspection of some documents.

8. Amongst the documents discovered was a letter dated 11 October 1995 from the First Defendant to their architects informing them that the Fire Safety Bureau required plans to be submitted to compartmentalise the switch rooms on the first, second, third, sixth and seventh levels of the building.

9. Another document discovered was a Capital Project Request of the First Defendant dated 10 June 1996 stating

As a result of the fire in Setron Building on 20.01.95, Fire Safety Bureau conducted a thorough inspection of Setron Building and found a number of installations are unauthorised. Among them are the switch room walls and doors

Version No 1: 20 Nov 2026 (00:35 hrs)

which are constructed of normal partition and flush doors. The regulation requires the walls to have 2 hours and doors to have 1 hour fire rating. This work is to regularise the deficiencies.

10. The particulars added by the amendment were

(k) Failing to provide and/or install any or any adequate compartmentation of the switchroom/electrical riser areas on each of the floors of the Setron Building by using walls of adequate fire resistance;

(l) Failing to provide and/or install the compartmentation at the switchroom/electrical riser areas, referred to above, in breach of the provision of Section 3.3 of the Code of Practice for Fire Precautions in Buildings 1991; and

(m) Failing to provide and/or install fire rated doors for the compartmentation at the switchroom/electrical riser areas on each of the floors of the Setron Building with adequate fire resistance, such failure also constituting a breach of the provision of Section 3.4 of the Code of Practice for Fire Precautions in Buildings 1991.

11. The Plaintiff also sought to add particulars specifying the absence of automatic sprinklers and fire-stops. I disallowed them because their absence was referred to in a report of Mr Trevor Walker of 10 February 1995 which the Plaintiff had, and there was no justification to amend the statement of claim to include them at such a late stage.

Version No 1: 20 Nov 2026 (00:35 hrs)

12. The Plaintiff also claimed that the First Defendant was negligent as landlord for permitting or acquiescing to the cooking and failing to install compartments and fire-rated doors.

13. At the outset of the hearing, I directed that the issue of liability was to be dealt with first, with the damages to be determined later if necessary.

Basis of liability

14. It was submitted on behalf of the First Defendant that the Plaintiff's rights against the First Defendant should be confined to its contractual rights under the tenancy agreements and that it was not entitled to proceed with its claim on negligence. Counsel cited *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd & Ors* [1986] 1 AC 80, where Lord Scarman said at p 107

Their Lordships do not believe that there is anything to the advantage of the law's development in searching for a liability in tort where the parties are in a contractual relationship. This is particularly so in a commercial relationship. Though it is possible as a matter of legal semantics to conduct an analysis of the rights and duties inherent in some contractual relationships including that of banker and customer either as a matter of contract law when the question will be what, if any, terms are to be implied or as a matter of tort law when the task will be to identify a duty arising from the proximity and character of the relationship between the parties, their Lordships believe it to be correct in principle and necessary for the avoidance of confusion in the law to adhere to the contractual analysis: on principle because it is a relationship in which the parties have, subject to a few exceptions, the right to determine their obligations to each other, and for the avoidance of confusion because different

Version No 1: 20 Nov 2026 (00:35 hrs)

consequences do follow according to whether liability arises from contract or tort, e.g. in the limitation of action.

15. *Tai Hing Cotton Mill* did not close discussion on the inter-action between tortious and contractual liabilities. Other views had been expressed on the question after Lord Scarman delivered his judgment. In *Henderson & Ors v Merrett Syndicates Ltd & Ors* [1994] 3 All ER 506 Lord Goff of Chieveley referred to *Tai Hing Cotton Mill, Midland Bank Trust Co Ltd v Hett Stubbs & Kemp (a firm)* [1978] 3 All ER 571 as well as some Canadian, New Zealand and Australian decisions and pronounced at p 532-3 that

(T)he common law is not antipathetic to concurrent liability, and that there is no sound basis for a rule which automatically restricts the claimant to either a tortious or a contractual remedy. The result may be untidy; but, given that the tortious duty is imposed by the general law, and the contractual duty is attributable to the will of the parties, I do not find it objectionable that the claimant may be entitled to take advantage of the remedy which is most advantageous to him subject only to ascertaining whether the tortious duty is so inconsistent with the applicable contract that, in accordance with ordinary principle, the parties must be taken to have agreed that the tortious remedy is to be limited or excluded.

16. In *Marc Rich & Co AG & Ors v Bishop Rock Marine Co Ltd & Ors* [1996] 1 AC 211 Lord Lloyd of Berwick said in his dissenting judgment at p 223

The function of the law of tort is not limited to filling in gaps left by the law of contract, as this House has recently re-affirmed in *Henderson v Merrett Syndicates Ltd.* [1995] 2 A.C. 145, 192, *per* Lord Goff of Chieveley. The House rejected an approach which treated the law of tort as supplementary to the law

Version No 1: 20 Nov 2026 (00:35 hrs)

of contract, i.e. as providing for a tortious remedy only where there is no contract. On the contrary: the law of tort is the general law, out of which the parties may, if they can, contract.

The majority judgment of Lord Steyn did not deal with this issue.

17. Our Court of Appeal has in *Wisma Development Pte Ltd v Sing-The Disc Shop Pte Ltd* [1994] 3 SLR 295 allowed a tenant to recover damages in an action for negligence against its landlord when its premises were flooded after a stop valve was left open. Although *Tai Hing Cotton Mill* was not discussed in the judgment, it is evident that the Court did not share the view of Lord Scarman. The Plaintiff should be allowed to proceed on tort and contract.

18. Eight documents formed the underpinning to the Plaintiff's claim -

(i) a Field Incident Report on the fire of the Singapore Civil Defence Force dated 14 February 1995, which recorded a "Naked light from gas cooker" as the cause of fire,

(ii) a report by Mr Trevor Walker of Graham Miller (Singapore) Pte Ltd, loss adjusters, dated 10 February 1995. Mr Walker stated in the report that

Although the fire did not spread from unit #02-01, intense heat and a considerable amount of smoke spread upwards, to levels 3, 4 and 5 partly due to the gaps in the floors around the electrical riser equipment. The absence of "fire stopping" in the floor gaps significantly contributed in exposing the equipment on the upper floors to contamination.

(The Plaintiff also relied on his evidence in court that when he visited the building after the fire, he found that there was no compartment for the riser on

Version No 1: 20 Nov 2026 (00:35 hrs)

the third level, nor for the riser on the fourth level which was enclosed in a switchgear room, and that the riser at the fifth level was enclosed in a specially constructed cabinet),

(iii) a report of Dr Eric Mullen of Dr J H Burgoyne & Partners Ltd, consulting scientists and engineers, dated 5 June 1995. Dr Mullen stated in the report that

There was no fire-stopping around the electrical riser at the time of my inspection and I consider it most likely that there was none at the time of the fire. The Singapore Code of Practice for Fire Precautions in Buildings 1991 requires that

fire-stopping capable of resisting fire for one hour is installed, and provision of fire-stopping is generally regarded as good practice,

(iv) a letter from the Director of Fire Service dated 8 January 1993 in respond to an application for renovation works on the fifth floor of the building, and after inspecting the premises directing that a fire compartment be provided for the riser duct,

(v) a letter from the Director dated 2 July 1993 in respect of the same application that the riser duct is to be enclosed with one-hour fire rated walls and half-hour fire rated doors,

(vi) the First Defendant’s letter referred to in para 8,

(vii) the Capital Project Request referred to in para 9, and

(viii) the Code of Practice for Fire Precautions in Buildings 1991.

Version No 1: 20 Nov 2026 (00:35 hrs)

20. The parties agreed to the admission of Dr Mullen's report in evidence, but not as agreed evidence. Dr Mullen was not called as a witness by either party. If he was, he could have clarified his statement that the "provision of fire-stopping is generally regarded a good practice" by explaining (a) when that became to be regarded as a good practice, (b) whether by "good practice" he meant that a reasonable owner would provide fire-stopping, and (c) if he did, the basis on which he formed that opinion.

Origin of the fire

21. The Field Incident Report stated without elaboration that a gas cooker caused the fire. The Plaintiff relied on the bare statement without calling the reporting officer WO Subari A.M. to explain if the conclusion was based on witnesses' statements or from an examination of the scene of fire or both.

22. Dr Mullen had inspected the premises and considered the statements of witnesses. He found that the fire started at the south-eastern end of the building and that it was likely to have been caused by human agency such as the careless disposal of smokers' materials.

23. He considered the Field Incident Report but discounted the gas cooking ring at the south corner of the premises as the original source of the fire, because "neither the witness's evidence (such as it is), nor the physical evidence can be adequately explained in terms of a fire starting at the heater, and I do not consider this to be the case."

24. The Plaintiff alleged that the First Defendant had permitted or condoned the cooking but neither was established. Cooking was expressly prohibited under the tenancy agreement. There was nothing to suggest that the First Defendant

Version No 1: 20 Nov 2026 (00:35 hrs)

ought to have known of the cooking as the alleged cooking was done on a limited scale on one gas ring located inside the Second Defendant's premises.

25. In its closing submissions, the First Defendant accepted that the fire was caused by the cooking activities of the Second Defendant, although Dr Mullen's report has thrown serious doubts over that.

The application of the Code

26. The Plaintiff's claim proceeded on the basis that the Code of Practice for Fire Precautions in Buildings 1991 applied to the Setron Building at the time of the fire.

27. The First Defendant argued that the Code did not apply to the Setron Building which was constructed in the 1970s, before the Code came into existence. The Code itself is silent on whether it applies to all buildings, or to buildings constructed and construction work carried out after it came into force. No evidence was adduced from the authorities administering the Code as to how it was applied and enforced.

28. There was some evidence which suggested that it was not enforced retrospectively. After the fire, the Singapore Civil Defence Force inspected the building and issued a letter on 6 February 1995 setting out a list of irregularities in the fire safety requirements that were to be rectified. There was no reference to sprinklers, compartments and fire-rated doors which are required under the Code but were not installed in Setron Building.

29. When approval was sought for addition and alteration works to the fifth level in 1992-3, the Fire Safety Bureau issued directions but no instructions were

Version No 1: 20 Nov 2026 (00:35 hrs)

issued for the provision of the fire-stops for pipes passing through floors which were required under the Code. It was only after the post-fire inspection that instructions for fire-stops were issued on of 6 February 1995.

30. Looking at the evidence before me, it is difficult to say that the Code applied to Setron Building in January 1995 when the fire occurred. Apparently sprinklers, compartments, fire-rated doors and fire-stops were not required when the building was constructed as the building was approved with them. There was no evidence that the authorities informed the owners when the Code came into force that they had to be installed.

31. The only evidence that compartments and fire-rated doors had to be installed were the two documents referred to in paragraphs 8 and 9 hereof. No one from the Fire Safety Bureau was called to explain (a) whether instructions were issued that all buildings were to comply with the Code, (b) whether instructions were issued for Setron Building to be brought into compliance with the Code, (c) when either instructions were issued.

32. The Plaintiff had not established that the Code or the requirement for compartments and fire-rated doors applied to the Setron Building in January 1995 when the fire broke out, or that the First Defendant as landlord or owner of the building had a duty under common law to install them.

The covenant for quiet enjoyment

33. The Plaintiff alleged that the First Defendant had breached the covenant to give the Plaintiff quiet enjoyment of the premises. The argument was that by allowing cooking on the premises which led to the fire which disrupted the Plaintiff's quiet enjoyment, the First Defendant had breached the covenant.

Version No 1: 20 Nov 2026 (00:35 hrs)

34. Counsel relied on Lord Denning's dicta in *McCall v Abelesz* [1976] 1 All ER 727 at 730-1 that

This covenant is not confined to direct physical interference by the landlord. It extends to any conduct of the landlord or his agents which interferes with the tenant's freedom of action in exercising his rights as tenant.

35. Counsel also cited *Sampson v Hodson-Pressinger* [1981] 3 All ER 710. In this case the plaintiff was a tenant of a flat in a converted house. The landowner constructed a roof terrace to the flat above the plaintiff's flat. The upper flat was rented to another tenant. The terrace was not properly constructed and noise penetrated into the plaintiff's flat whenever some one walked on the roof terrace. Eveleigh J found that the landlord had breached the covenant for quiet enjoyment.

36. The First Defendant had neither allowed nor condoned cooking on the premises. The facts are removed from those in *Sampson* because in that case, the landlord authorised the tenant of the upper flat to use the roof terrace. For doing that, the landlord should be accountable for the consequences. The First Defendant had not done anything which would attach it with liability for cooking done on the Second Defendant's premises.

The exemption clause

37. The First Defendant contended that it was not liable to the Plaintiff because clause 4.4 of the tenancy agreements had provided that

Notwithstanding anything herein contained the Landlord shall be under no liability whatsoever either to the Tenant or their employees independent

Version No 1: 20 Nov 2026 (00:35 hrs)

contractors, agents, visitors, invitees or licensees for any accidents happening or injuries sustained or for loss of or damage to goods or chattels in the Building or any part thereof, whether arising from any act, negligence or omission of the Landlord or any person or any other cause of whatsoever nature.

38. Counsel for the Plaintiff submitted that

This kind of clause is ineffective. In *Suisse Atlantique Societe D'Armement Maritime S.A. v N.V. Rotterdamsche Kolen Centrale* [1967] 1 AC 361 Lord Wilberforce ruled:

One may safely say that parties cannot, in a contract have contemplated that the clause should have so wide an ambit as in effect to deprive one party's stipulations of all contractual force: to do so would be to reduce the contract to a mere declaration of intent.

39. Counsel also cited *Glynn v Margetson & Co* [1893] AC 351, *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] AC 576 and *Tor Line AB v Alltrans Group of Canada Ltd; "The TFL Prosperity"* [1984] 1 All ER 103 and *"The Sumi Maru 9001", Wiltopps (Asia) Ltd v Owners of the Tug or Vessel "Sumi Maru 9001" & Anor* [1993] 1 SLR 198 in support of that proposition.

40. Clause 4.4 does not exempt the First Defendant from all liability under the tenancy agreement. It is confined to "accidents happening or injuries sustained" and "loss of or damage to goods or chattels". It does not excuse the First Defendant from liability if it failed to discharge its primary obligations as landlord to give possession of the demised premises and to allow the Plaintiff to occupy and use them.

Version No 1: 20 Nov 2026 (00:35 hrs)

41. The clause does not reduce the contractual force of the tenancy agreement so much that it becomes a mere declaration of intent. There is no reason for not giving it its declared effect.

Conclusion

42. The Plaintiff had not shown that the First Defendant had breached the covenant for quiet enjoyment. Even if the First Defendant had caused the damage suffered by the Plaintiff by failing to stop the cooking activities, or by failing to install the compartments and fire-rated doors, the exemption clause excused it from liability.

43. The Plaintiff's claim was therefore dismissed with costs.

Kan Ting Chiu J

Liew Teck Huat with Michael Puhaindran (Niru & Co) for the Plaintiff
Peter Sim, V. Kanyakumari and Chuo Cher Shing (Sim Hill Tan & Wong) for the First Defendant

Version No 1: 20 Nov 2026 (00:35 hrs)