

3, 1969

3

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No.22 of 1967.

O N A P P E A L

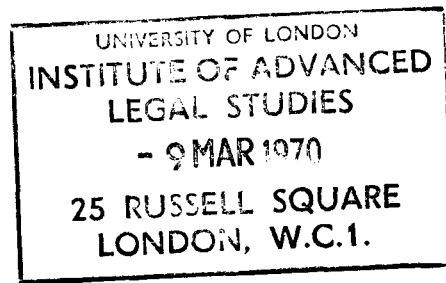
FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

B E T W E E N :-

- 1. HO TONG CHEONG
- 2. HO SAN CHEONG
- 3. HO KOK CHEONG

all carrying on business under the
firm name of KWONG KUM SUN CHAN

Appellants
(Defendants)



- and -

OVERSEA CHINESE BANKING CORPORATION
LIMITED

Respondents
(Plaintiffs)

R E C O R D O F P R O C E E D I N G S

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill, London, E.C.3.

Solicitors for the Appellants

TITMUSS, SAINER & WEBB,
2, Serjeant's Inn,
London, E.C.4.

Solicitors for the Respondents

(i)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No.22 of 1967

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

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I N D E X O F R E F E R E N C E

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"P.1"	(a) Plan B.P. 366/60 (b) Plan B.P. 366/60	2nd November 1960 2nd November 1960	
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"P.3"	Plan shewing coloured deviations from approved Plans, Exhibits "P.1" and "P.2"		(in pocket at end)

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

B E T W E E N :-

10

1. HO TONG CHEONG
2. HO SAN CHEONG
3. HO KOK CHEONG
all carrying on business under the
firm name of KWONG KUM SUN CHAN

Appellants
(Defendants)

- and -

OVERSEA CHINESE BANKING CORPORATION
LIMITED

Respondents
(Plaintiffs)

R E C O R D O F P R O C E E D I N G S

No.1

SPECIALLY INDORSED WRIT OF SUMMONS
IN THE HIGH COURT IN SINGAPORE

20

Suit No. 312 }
of 1965 } Between
Oversea-Chinese Banking
Corporation Limited ... Plaintiffs

In the High
Court in
Singapore

No.1
Specially
Indorsed Writ
of Summons
1st March 1965

And

30

1. Ho Tong Cheong
2. Ho San Cheong
3. Ho Kok Cheong
all carrying on business
under the firm name of
Kwong Kum Sun Chan ... Defendants

THE HONOURABLE MR. JUSTICE WEE CHONG JIN, CHIEF
JUSTICE IN SINGAPORE IN THE NAME AND ON BEHALF OF HIS
MAJESTY THE YANG DI-PERTUAN AGONG.

In the High
Court in
Singapore

No.1
Specially
Indorsed Writ
1st March 1965
(Contd.)

To (1) Ho Tong Cheong, (2) Ho San Cheong and (3) Ho
Kok Cheong all carrying on business under the
firm name of Kwong Kum Sun Chan at No. 203 South
Bridge Road, Singapore, merchants.

We command you that within eight days after
the service of this writ on you, inclusive of the
day of such service, you do cause an appearance to
be entered for you in a cause at the suit of Oversea-
Chinese Banking Corporation Limited, whose registered
office is situate at China Building Chulia Street,
Singapore, And take notice that in default of your
so doing the Plaintiffs may proceed therein to
judgment and execution. 10

WITNESS the Honourable Mr. Tan Wee Kian,
Registrar of the High Court of Singapore, the 1st
day of March 1965.

Sd: Elias Brothers
Solicitors for the Plaintiffs

Sd: Boey Kum Hong
Dy. Registrar
Sd: J. Tan

N.B. - This writ is to be served within twelve
months from the date thereof, or if renewed, within
six months from the date of such renewal, including
the day of such date and not afterwards. 20

The Defendant may appear hereto by entering an
appearance either personally or by Solicitor at the
Registry of the High Court at Singapore.

A Defendant appearing personally may, if he
desires enter his appearance by post and the appro-
priate forms may be obtained by sending a Postal
Order for \$5.50 with an addressed envelope to the
Registrar of the High Court at Singapore. 30

STATEMENT OF CLAIM

The Plaintiffs' claim is for possession of the
premises known as No.203 South Bridge Road, Singapore.

2. Until the 31st October, 1964, the defendants
held the said premises of the plaintiffs as monthly
tenants at the monthly rent of \$192.50 payable
monthly in advance on the 1st day of each month.

3. The said tenancy was duly determined by notice
in writing to quit expiring on the 31st October, 1964. 40

which was served on the defendants on or about the 21st September, 1964.

In the High
Court in
Singapore

4. The plaintiffs are not precluded by the Control of Rent Ordinance from obtaining judgment for possession of the said premises, because the defendants have knowingly committed breaches of the Municipal Ordinance and the Building by-laws made thereunder affecting the premises which expose the plaintiffs to penalty or fine.

No. 1
Specially
Indorsed Writ
of Summons
1st March 1965
(Contd.)

10

PARTICULARS

The defendants have commenced and carried out the following building operations at the said premises which constitute breaches of the provisions of section 144 (7) of the Municipal Ordinance and the Building By-laws punishable under section 144 (10) of the said Ordinance and which by virtue of section 144 (12) of the same Ordinance are deemed to have been commenced and carried out by the plaintiffs, viz:-

20

- (i) the open space at the rear of the building has been completely covered.
- (ii) the staircase has been re-constructed with a width of only 30 inches.
- (iii) a dining area has been constructed on the first floor over the open area, consisting of timber floor decking over 5" x 3" bearers and 6" x 3" trimmer joists with a ceiling height of 8' 8" at the highest end and 8' 3" at the lowest end.

30

- (iv) the use of the first floor hall has been converted into an office, store and sitting room without natural light or ventilation and with a passage to the offices and front store only 3 feet in width.
- (v) a new roof has been constructed over the dining area which overhangs the adjoining property by about 2 feet.

40

- (vi) a water tank and other sanitary fittings (including water closets and basin) have

4.

In the High
Court in
Singapore

been installed over the flat concrete
roof of the ground floor bathroom.

No.1
Specially
Indorsed Writ
of Summons
1st March 1965
(Contd.)

5. The plaintiffs also claim \$6,352.50 arrears of
rent for the said premises for 33 months from the
1st February, 1962, to the 31st October, 1964, at
the rate of \$192.50 per month; and mesne profits
at the same rate from the 1st November, 1964, till
the date of judgment or delivery of possession of
the said premises.

Sd: Elias Brothers 10

And the sum of \$65-00 (or such sum as shall be
allowed on taxation of Costs.) If the amount
claimed is paid to the Plaintiffs or their solicitors
within the time limited for appearance further
proceedings will be stayed.

TAKE NOTICE that in default of your entering an
appearance hereto final judgment may be entered at
once against you for the above amount and costs.

AND TAKE FURTHER NOTICE that if you enter an
appearance you must also deliver a defence within 20
10 days from the last day of the time limited for
appearance unless such time is extended by the
Court or a Judge; otherwise judgment may be entered
against you without notice, unless you have in the
meantime been served with a Summons for judgment.

THIS WRIT was issued by Messrs Elias Brothers
of No.6-A, Raffles Place, Singapore, Solicitors for
the said Plaintiffs whose registered office is
situate at China Building, Chulia Street, Singapore
and are a banking company incorporated in Singapore. 30

Sd: Elias Brothers
Solicitors for the Plaintiff

5.

No.2

STATEMENT OF DEFENCE

In the High
Court in
Singapore

No.2
Statement of
Defence
24th March 1965

1. The Defendants admit paragraphs 2 and 3 of the statement of Claim.

2. The Defendants deny paragraph 4 of the Statement of Claim.

10 3. The Defendants admit the arrears of rent claimed in paragraph 5 of the Statement of Claim, but say that they have always been ready and willing to pay the said rent but the same has been refused each time it has been tendered to the Plaintiffs.

4. The Defendants claim the protection of the Control of Rent Ordinance (Cap. 242).

5. Save as is herein expressly admitted or denied the Defendants deny each and every the allegations contained in the Statement of Claim as if the same were set out seriatim and each denied specifically.

20 Dated and Delivered this 24th day of March 1965.

Sd: R. C. H. Lim & Co.
SOLICITORS FOR THE DEFENDANTS

To:-

Messrs. Elias Brothers
Solicitors for the above named Plaintiffs
Singapore

In the High
Court in
Singapore

No.3.

NOTES OF EVIDENCE

No.3
Notes of
Evidence
of Chua J.
16th
November
1966

Coram: CHUA, J.

Wednesday, 16th November, 1966

S. Elias for plaintiffs.

Ess for defendants.

Elias: Paragraphs 2 and 3 of Statement of Claim not denied; only paragraph 4 denied.

One issue: whether defendants have knowingly committed breaches of the Municipal Ordinance. 10

Agreed Bundle - EX AB1.

Interrogatories and answers - Ex. AB 2.

Works set out in particulars admitted. I have to prove that they are breaches of Municipal Ordinance.

I have to prove that all these works were done before 1st September, 1963 when Municipal Ordinance was repealed.

Interrogatory No.16 - p.4 AB2; answers at p.12 answers 16 and 17 - work done during the time Municipal Ordinance was in force. Answers 18 and 19 - they did it without plan in month of July 1961. 20

Allegations in the particulars all admitted in the answers:-

Particulars item (i) - Interrogatories 1 and 2 answers 1 and 2 all "Yes".

Particulars item (ii) - Interrogatories 11 and 12 answer No.4 staircase is 40 "not 30"; answer No.5.

Particulars item (iii) - dining area is in open area. Interrogatories No. 2, 3, 6 and 10; answers all "Yes". 30

Particulars item (iv) - answers admit that except that they are offences; interrogatories 13

7.

and 14; 15, answers 1, 6, 7, 8, 9, 10, 11, 12.

Particulars item (v) - interrogatories 4 and 5; answers all "Yes".

Particulars item (vi) - interrogatories 7, 8 and 9; answers all "Yes".

All the works complained of except in minor detail admitted.

I must also show intention and knowledge.

10 AB 1 - in 1960 tenants knew of need to submit plans.

Paragraph 5 of Statement of Claim - rents have been paid into Court on 23rd April, 1965 - up to 31st October 1964.(sic)

Calls -

P.W.1 Lim Siak Koon - a.s. (in English):

xd. by Mr. Elias.

Living at 213A Persiaran Keliling; clerk in Chief Building Surveyor's Dept. and in that capacity I have custody of building plans.

20 I have with me the alternative plans for No.203 South Bridge Road. The earlier one was BP 366/60 dated 2/11/60 and I have with it a file containing memoranda - (Ex. P1) - proposed alteration to shop front, signed by a registered architect Kwan You Luan, the owner and the tenant. On the plan is shown an authorised glass corrugated iron lean-to roof over the back area, shown as to be demolished.

30 In the minutes it appears this roof was demolished, minute of 11/8/61.

There is a further plan BP 366B/60 dated 6/4/61 and the file. It is amendment to BP 366/60 also relating to the front. The same roof shown in plan shown to be demolished. There is a minute that roof was demolished, same minute of 11/8/61 and appears in Ex. P1. (Amended plan Ex.P2).

In the High Court in Singapore

No.3
Notes of Evidence of Chua J.
16th November 1966.
(Contd.)

No.3
Notes of Evidence of Chua J. Plaintiffs Evidence 3(i) P.W.1. Lim Siak Koon Examined 16th November 1966.

In the High Court in Singapore

No.3
Notes of Evidence of Chua J 16th November 1966
(Contd.)

Plaintiffs Evidence 3(i) Lim Siak Koon Cross-Examined

XXd. by Mr. Ess.

Ex. P1 - yes there is a rubber stamp "Approved under the Local Government Ordinance 1957" and dated 21st November 1960 and signed by the acting Chief Building Surveyor.

Ex. P2 - similar rubber stamp, dated 19th May 1961 and signed by acting Chief Building Surveyor.

Yes these plans approved under Local Government Ordinance and not Municipal Ordinance.

Q. If there is any breach of the building bye-laws will proceedings be taken under the Local Government Ordinance? 10

A. There are two stamps on the plan, on approval we stamped it once and on completion we stamped it again. So if any contravention of bye-laws we would not put on second stamp.

Yes if any breach proceedings would be taken under Local Government Ordinance and not Municipal Ordinance.

20

RXD.

Re-Examined

I am not concerned with prosecutions for breach of bye-laws. My answer to counsel in cross-examination was more or less guess work.

(Witness released)

Sgd. F.A. Chua.

(Elias: Work in front was done in proper way but not the works at back of premises - that was only to show knowledge).

No.3
Notes of Evidence of Chua J
Plaintiffs Evidence 3(ii)
Edwin Chan Chin Tan. Examined

P.W.2 - Edwin Chan Chin Tan - s.s. (in English) : 30

Xd. by Mr. Elias

Bachelor of Architecture, A.R.A.I.A.; A.R.I. B.A., chartered and registered architect, Singapore.

On instructions of plaintiffs' agent Eastern

Realty Ltd. I inspected No. 203 South Bridge Road on a number of occasions. The first on 4th December 1963 (witness refers to his notes). I prepared a plan of the premises showing coloured, deviations from the approved plans Ex. P1 and P2. (Plan Ex.P3).

In the High Court in Singapore

No.3
Notes of Evidence of Chua J 16th November 1966
Plaintiffs Evidence 3(ii)
Edwin Chan
Chin Tan
(Contd.)

I also attended with a photographer and supervised the taking of the photographs in Ex.AB2.

10 Q. I will take you through Ex. P3; particulars item (i). Where is it?

A. The open area is the portion where shown coloured yellow on the first floor.

Q. Look at plan Ex. P2, where is the open area?

20 It shows a one-storey high roof over the open area to be demolished. When I inspected the premises the roof shown in the plan Ex. P2 was not there. In respect of the open area I found that the whole open area was covered by a new floor; the walls have been brought up from the front and the side; when I said the front I meant the side fronting the back lane.

(Elias: Look at photo in P.6 AB 2).

30 The whole building is No. 203. If the approved plan was conformed with the wall by the side and the back would be just at the first floor level; there will not be any bath room, it would be an open area except for the left side where there was an existing kitchen, an open kitchen, a verandah type of kitchen. The open area was covered by a timber floor; I measured the timber joists it was 6 x 3. Above that was a ceiling and then a roof. Ceiling height, at the highest end it was 8 ft. 7" and lowest end 8 ft. 4½". The new roof is made of timber joist and abestos roof sheets. I noticed there is an encroachment of the roof over the adjoining proper, overhangs I judge in region of 1 to 2 ft. I did not measure. The overhangs can be seen in the photo on the left, with the gutter.

40 (Elias: Look at photo P.8 Ex. AB2).

This is photo of the interior of the first floor. The aircondition duct does not run over the ceiling.

In the High
Court in
Singapore

No.3

Notes of
Evidence
of Chua J
16th November
1966

Plaintiffs
Evidence
3(ii) Edwin
Chan Chin
Tan

(Contd.)

8ft. $4\frac{1}{2}$ is clear height of ceiling.

Q. In what respect all this contravenes
the building bye-laws?

A. Municipal By-law 205 - ceiling must be
not less than 9 ft. in height. Building
over the open area - bye law 209. The
wall in photo P.6 Ex. AB is more than
10 ft.; 10 ft. would be up to the
horizontal line below the air conditioner.

Bye-law 208 - infringement, roofing over open 10
area cannot be carried out without consent of the
competent authority.

(Elias: Bye-laws 136 and 137).

The windows are undersized, they do not
comply with the bye-laws.

The overhanging is a breach of the Municipal
Ordinance. I do not have the Municipal Ordinance
with me. Can I have the Bye-laws too?

Encroaching of the open area would also
offend S.146 of the Municipal Ordinance.

20

(Elias: S.144 (11) (b) (2).

The works on the open area would come within
that section.

(Elias: S.144 (11) (h).

The extension of the walls above first floor
level would offend this section.

(Elias: Photo P.8 Ex. AB2).

This shows water tank, toilet and wash basin.
They were erected without any permission, they do
not however offend any by-laws.

30

(Elias: Photo P.7 Ex. AB2).

This shows the staircase. Shown in my plan.
I measured the width of it. The bottom clearance
of 32"; at top landing clearance of $36\frac{3}{4}$ ". The
by-laws require, By-law 157, 3 ft. 6". This is a

main staircase in the Building. It does not conform with the Bye-law.

The front portion of the first floor has been converted into 3 rooms, a store in front and two offices. The store has natural light and ventilation; the two offices have no natural light and ventilation and that offends Bye-law 136.

10 The corridor of 3 ft. giving excess(sic) to the store and the two offices infringe Bye-law 73, corridor should be 3½ ft. wide.

(Elias: Photo P.9 Ex. AB2).

This shows the corridor and the waiting area. The offices enclosed in glass.

XXd. Nil.

(Witness Released).

Sgd. F.A. Chua.

20 Elias: That is all evidence I wish to call. There is evidence that there have been breaches of the bye-laws and S. 146 of the Municipal Ordinance and breaches of S.144 of the Municipal Ordinance. S.144(7), "building" defined in S.144 (11) - (11) (b) applies so also (11) (f), (11) (g), (11) (h). Defendants have done all that so they have contravened S.144(7). The punishment is in S.s. 10 of S.144 (a), (b) and (c).

As to who is liable - it is clear defendants did it, Ss.12 of S.144 makes owner liable; Lim Beng Teck v. R.1957 M.L.J. 21.

30 I must satisfy Court that Municipal Ordinance was in force on date in 1961 when these things were done.

(Ess: I concede).

1959 M.L.J. 219 City Council v Tong Teck Seng.

I have established the fact that these breaches have occurred which caused plaintiffs to be exposed

In the High Court in Singapore

No.3
Notes of Evidence of Chua J 16th November 1966
Plaintiffs Evidence 3(ii) Edwin Chan Chin Tan

(Contd.)

No.3
Notes of Evidence of Chua J
Plaintiffs Submissions

In the High Court in Singapore

No. 3
Notes of Evidence of Chua J Plaintiffs Submissions 16th November 1966
(Contd.)

to penalty or fine.

Chung Lai Heng v. Muragappa 1952 M.L.J. 232.

"Knowingly" : (1) Sarah Cashin v. Soh Kah Seng, (1955) M.L.J. 52.

(2) Hooi Chuk Kwong v. Lim Saw Choo 1958 M.L.J. 5.

- Adjourned to 2.30 -

Intld: F.A.C.

Hearing resumed.

Elias continues:

10

(3) Nathan Bros. v. Tong Nam Contractors Ltd. 1959 M.L.J. 240. I submit Court should not follow Ambrose J. to the extent that he went.

S. 15(1)(h) Control of Rent Ordinance - I submit it cannot be read into it that only people who knew the provisions of S.144 is covered by this section. How many people in Singapore know what S.144 provides. Whitton, J. was nearer the mark.

"Knowingly" merely means that he knows what he was doing and if you want to take it any further - that what he was doing was illegal or contrary to law. 20

Brown J. in 1952 M.L.J. 232 was right when he said "Knowingly" qualified the nature of the act. "Knowingly committed a breach".

In our case from the evidence I have established prima facie that defendant knew what he was doing and he knew that that he was doing was illegal and it could be inferred that he knew he was in breach of Municipal Ordinance as a few months before that he approached agent of plaintiff and he put in a plan. He knew cover of open area not allowed, he knew it had to be demolished and yet he did it. He would know from his architect that the work that he had done would not have been allowed. 30

S.107 Evidence Ordinance - I submit in this case the burden is on defendant to prove to Court

that he did not do all this work knowingly.

Ess: I am not calling any witness.

Elias: Nothing much more I can say except that my learned friend's clients have not come to rebut the inferences Court should draw. Court should find that he "knowingly" committed a breach of the Municipal By-laws.

Ess: Claim is for possession under S.15(1)(h) in respect of a breach of the Municipal Ordinance. My learned friend has referred to S.144 of Municipal Ordinance And SS. 12 and he has cited case decided, Wyatt C.J., so that under S.S.12 the owner of land primarily liable.

S.144 (10) provides the penalty - fine and mandatory order.

S.392 Municipal Ordinance - I submit plaintiff in only exposed when a complaint is made and in this case there has never been a complaint, never been a prosecution and never been a conviction. As time has elapsed, 12 months the plaintiff never been exposed to penalty.

Local Government Ordinance 1957: S.169; SS.13 is penalty section same as Municipal Ordinance except the amount of the fine; SS (14) - person still has opportunity of submitting plans; SS.(15) - SS.(17) have substantially altered.

S.172(1) - plans can be amended.

S.313 - slight alteration to Municipal Ordinance.

Local Government Integration Ordinance which came into force 1st September 1963 this repealed the Municipal Ordinance and Local Government Ordinance, relevant section relating to building operation is S.52; SS.14 of S.52 provides the penalty; SS.15 - can still submit plans. SS.16 "convicted". SS.18(a) "existing building", person primarily liable is person who is known and can be found.

These works done in 1961 and I submit plaintiff has never been exposed to any penalty or fine, as under Municipal Ordinance period of

In the High Court in Singapore

No.3
Notes of Evidence of Chua J Plaintiffs Submissions (Contd.)

No.3
Notes of Evidence of Chua J Defendants Submissions 16th November 1966

In the High Court in Singapore

No.3
Notes of Evidence of Chua J
Defendants Submissions
16th November 1966
(Contd.)

12 months have elapsed, and he is not liable until complaint is made and no complaint is made. Today a person held liable not the owner but the person who actually carried out the works. No proceedings can today be brought against the defendant and least of all the plaintiff.

My next point - In deciding whether the plaintiff is entitled to possession under S.15(1) (h) should Court look at facts existing at time tenancy was determined or at time when the plaintiff enforces his right? This tenancy determined on 31st October 1964 and writ issued on 1st March 1965. I submit on either of these dates plaintiff not exposed to any penalty fine or forfeiture.

10

Cases: (1) Zbyniewsky v Broughton 1956 3 All E.R.348, 349 "Judgments. (352).

(2) Ida Fernandez v. Murugiah 1950 M.L.J. 83 "Whether the case falls"

I submit whether you take time when tenancy is determined on date of proceedings plaintiff was not exposed to any penalty etc.

20

(3) 1958 M.L.J. 5 Hooi Chuk Kwang v Lim Saw Choo - Court of Appeal not dealing with S.166 of Municipal Ordinance as my learned friend said. Court held not sufficient to show landlord is exposed to penalty but must be exposed to conviction as well.

(4) Sarah Cashin's case - it cannot be regarded today as good law.

30

(5) 1952 M.L.J. 232 - r.c. "I think that the true construction" I submit in our case defendant has committed a breach which did not expose plaintiff to penalty, because he is not exposed until a complaint has been made.

Knowledge: Nathan Bros.' case 1959 M.L.J. 241 l.c. "I accepted the above-cited doing so." No evidence defendant knowingly committed the breach. My learned friend has asked Court to infer that from plans submitted earlier he has knowledge. Look at plans, endorsed "Approved under Local Government

40

Ordinance." How can defendant know plans have been approved under Municipal Ordinance? Under Local Government Ordinance defendant could submit plans and he would be liable not the landlord.

In the High Court in Singapore

My learned friend has referred to S.107 Evidence Ordinance - I submit it has no application.

No.3
Notes of Evidence of Chua J
Defendants Submissions
16th November 1966
(Contd.)

10 In our case no letter, no notice served on defendant or on plaintiff, no prosecution, no conviction. Municipal Ordinance no longer in force, local authority cannot prosecute the defendant or plaintiff today.

S.179 Local Government Integration Ordinance - limitation of liability. No proceedings can be taken against defendant much less the plaintiff.

Elias: O. 34 R. 36, Mallal's 456.

Court allows Elias to reply on law.

Elias: S.392 Municipal Ordinance cited by my learned friend - but see Brown J's judgment, breach at time it was committed.

No.3
Notes of Evidence of Chua J
Plaintiff's Submissions in reply

20 My learned friend says you must look at it at time tenancy is determined. I submit you look at it at time he committed the breach. (1966) 2 M.L.J. 45 at 48 r.c. "The next question" 49 "In my opinion"

The moment he committed the breach fetters of landlord struck off.

As soon as it was discovered Notice was given - p.6 AB1 - September 1964.

30 If defendant can keep it a secret for one year, if my learned friend's submission is correct, plaintiff cannot recover.

- C. A. V. -

Sgd. F.A. Chua.

In the High
Court in
Singapore

No.4

JUDGMENT OF CHUA. J.

No.4
Judgment
of Chua J

24th November
1966

The plaintiffs' claim is for possession of the premises known as No. 203, South Bridge Road, Singapore of which the defendants were monthly tenants on the ground that the defendants "have knowingly committed breaches of the Municipal Ordinance and the Building By-laws made thereunder affecting the premises which expose the plaintiffs to penalty or fine". The Particulars of the breaches are set out in the Statement of Claim endorsed on the writ. 10

The plaintiffs claim that they are entitled to possession under paragraph (h) of Section 15(1) of the Control of Rent Ordinance (Cap. 242), (hereinafter referred to as the Ordinance.)

Section 14 of the Ordinance provides that "no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this part of this Ordinance." 20

Paragraph (h) of Section 15(1) of the Ordinance provides:

" 15 (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:-

(h) where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture; " 30

The plaintiffs say that by virtue of Section 144 (12) of the Municipal Ordinance (which was in force in July, 1961) the building operations carried out by the defendants were deemed to have been commenced and carried out by them and they 40

were liable for the breaches and by Section 144 (10) of the same Ordinance they were liable to a fine and the Court might make a mandatory order requiring them to alter or demolish the building.

In the High
Court in
Singapore

No.4
Judgment
of Chua J

24th November
1966

(Contd.)

10 The defendants do not dispute that they carried out the works without submitting a plan to the proper authority. They do not dispute that there was a breach of Section 144 (7) of the Municipal Ordinance and that the works carried out constitute breaches of the Building By-laws. Their main argument is that these breaches do not expose the plaintiffs to any penalty, fine or forfeiture.

20 The argument of counsel for the defendants is shortly this. In July, 1961, the law in force regulating building operations was the Municipal Ordinance and the Local Government Ordinance, 1957. These two ordinances were repealed on the coming into force of the Local Government Integration Ordinance 1963, on the 1st September, 1963. It is true that by virtue of Section 144 (12) of the Municipal Ordinance the owner of the land was liable for the breaches committed by his tenant but by Section 392 of the same ordinance no person
30 was liable to any fine or penalty unless a complaint respecting the offence was made within twelve months. He submits that the plaintiffs in this case were only exposed to a fine when a complaint was made which in this case was never made. Furthermore there has been a substantial alteration in the law as regards the liability of the owner. By Section 169 (17) of the Local Government Ordinance (which came into force in 1957) the owner was liable
40 only if the person who actually commenced or carried out the work was not known or could not be found and under the Local Government Integration Ordinance (which is the Ordinance now in force) the person liable is not the owner but the person who actually carried out the work and by Section 179 of the same ordinance even the defendants are not now liable to a fine as a complaint has not been made within three years. He submits that in deciding whether the

In the High
Court in
Singapore

No.4
Judgment
of Chua J

24th November
1966
(Contd.)

plaintiffs are entitled to possession under paragraph (h) of Section 15 (1) of the Ordinance the Court should look at the facts existing at the time the contractual tenancy was determined or at the time when the writ was issued which in this case was the 31st October, 1964, and 1st March, 1965, respectively. On either of these dates the plaintiffs were not exposed to any fine, penalty or forfeiture.

In support of his submission counsel relied on the following statement of Murray-Aynsley, C.J. in the case of *Ida Fernandez v Murugiah*, (1950) M.L.J. 83:

10

" Whether the case falls within one of these exceptions or not depends on the state of facts at the moment when the previous tenancy is determined."

The learned Chief Justice when speaking of "these exceptions" was referring to Section 14(1) of the Control of Rent Ordinance, 1957, which provided that the Court may make an order for possession against the tenant of controlled premises only on certain specified grounds.

20

Now, this statement of the learned Chief Justice was considered by the Federal Court in the case of *S.E. A.C. Co. vs. Ang Ah Bak* (Civil Appeal No. Y8 of 1966, which has not yet been reported). The Federal Court was of the view that that statement of the learned Chief Justice was expressed in terms that were too wide and could not be applied to every case where a plaintiff was seeking to recover possession under the provisions of Section 15 (1) of the Ordinance.

30

In *Chung Lai Heng v Murugappa Chettiar*, (1952) M.L.J. 232, which is an appeal from the District Court, the appellant was the landlord of premises of which the respondent was the tenant and the appellant claimed possession on the ground that the tenant had committed a breach of the Municipal Ordinance by erecting two sheds for which offence she had been fined. The District Judge refused to make an order because he was of the view that under Section 14 (k) of the Control of Rent Ordinance, 1947, the landlord must be exposed to the penalty,

40

fine or forfeiture at the date of expiry of the notice to quit, Brown, J. was of the view that the District Judge was wrong in refusing to make an order for possession and expressed his views thus:

In the High Court in Singapore

No.4
Judgment
of Chua J

24th November
1966
(Contd.)

10 " It seems to me that the view of construction taken by the learned District Judge would render the section nugatory. If the landlord must be exposed to the penalty, fine, or forfeiture at the date of the expiry of the notice to quit a tenant having committed the breach and having been served with a notice to quit terminating the contractual tenancy, could cease committing the breach before the expiry of the notice, and having become a statutory tenant under section 16 he could commit a further breach and be given a further notice; and before the
20 expiry of that notice he could cease the breach and claim the protection of the sub-section. This could go on 'ad infinitum'.

30 I think that the words "which exposes the landlord to any penalty, fine or forfeiture" qualify the earlier words. I think that the true construction is that not every breach of the Municipal Ordinance on the part of a tenant will deprive him of the protection afforded by section 14. He is only to be deprived of that protection if he has committed a breach of such a nature that it exposes his landlord to any penalty, fine or forfeiture."

40 Section 14 (k) was in similar terms to Section 15(h) of the Ordinance except that the word "knowingly" before the word "committed" and the words "of any written law regulating any business carried on upon the premises or" after the word "breach" and before the words "of any provision of the Municipal Ordinance" did not appear.

I respectfully agree with the construction placed on Section 14(k) by Brown, J.

The object of the Rent Control Ordinance is to

In the High
Court in
Singapore

No.4
Judgment
of Chua J

24th November
1966
(Contd.)

fetter landlords and take away their common law rights and not to afford the tenant a statutory defence. In my view immediately a tenant commits a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or any Rule or By-law made thereunder affecting the premises he removes the fetter on the landlord's right to recover possession and he loses the protection of the Ordinance and the landlord's right of action for recovery of possession arises.

10

The point is also taken that it has not been established that the defendants committed the breaches "knowingly". Counsel for the defendants submit that it must be proved that the defendants knew that they were committing a breach of the Municipal Ordinance at the time of their doing so.

The word "knowingly" in paragraph (h) of Section 15 (1) was interpreted by Whitton, J. in the case of Sarah Cashin v. Goh Kah Seng, (1955) M.L.J. 52. The learned Judge said (at p.53):

20

" The main difficulties in the case arise in interpreting Section 15(1)(h) of the Control of Rent Ordinance. In this connection the first point is to determine the meaning and scope of the word "knowingly". It is noteworthy that this word did not appear in the corresponding section - 14(1) (k) - of the earlier (1947) Control of Rent Ordinance. It seems safe to conclude, therefore, that when they added it the Legislature considered it desirable to give the tenant added protection by requiring proof of the existence of particular knowledge on his part before the section might operate against him, but what this knowledge was to be is perhaps not so certain. In Chung Lai Heng (m.w.) v Murugappa Chettiar Brown J. said of section 14 of the 1947 Ordinance:-

30

40

" I think that the true construction is that not every breach of the Municipal Ordinance on the part of a tenant will deprive him of the protection afforded by Section 14. He is only to be deprived of that protection if he has

committed a breach of such a nature that it exposes his landlord to any penalty, fine or forfeiture. "

In the High Court in Singapore

This is, in my opinion, the correct construction, and if it is accepted the effect of adding the word "knowingly" appears to be that before a tenant is deprived of this protection not only must he have committed a breach which exposes his landlord but also he must have known that he was committing a breach at the time of doing so. "

No.4
Judgment
of Chua J

24th November
1966
(Contd.)

10

Ambrose J. in the case of Nathan Brothers v. Tong Nam Construction Ltd. (1959) M.L.J. 240 accepted the interpretation of the word "knowingly" by Whitton, J. but he went further than Whitton, J. The learned Judge said (at p.241):

" I accepted the above-cited interpretation of the word "knowingly" by Whitton J. and came to the conclusion that, before the defendants could be deprived of the protection of the Ordinance under S. 15(1) (h), they must be proved to have known that they were committing a breach of the Municipal Ordinance at the time of doing so. "

20

With all due respect to the learned Judge, I think Ambrose, J. had gone too far. In my view it cannot be read into paragraph (h) that only people who knew the provisions of the Municipal Ordinance are covered by this paragraph. The word "knowingly" in my view qualifies the nature of the act and it merely means that a defendant knew what he was doing, that is, he did it consciously or intentionally.

30

In this case the evidence is that in November, 1960, the defendants submitted a plan signed by themselves, their architect and the plaintiffs to the proper authority. The plan was for the alteration to the shop front of the premises. In April, 1961, an amended plan was submitted. Both these plans show an unauthorised glass corrugated iron lean-to roof over the open area at the back of the premises which was to be demolished. The plans were approved on 21st November, 1960, and 19th May, 1961, respectively. In July, 1961, the defendants carried out the building operations over the open area at the back of the premises knowing full well that a covering over the

40

In the High
Court in
Singapore

open area was illegal. There is no doubt about
it that the defendants committed the breaches
knowingly.

No.4
Judgment
of Chua J

The breaches committed by the defendants
would if made out in the proceedings against
the plaintiffs lead to a conviction of the
plaintiffs and that would lead to a fine, penalty
or forfeiture.

24th November
1966

(Contd.)

For these reasons I hold that the plaintiffs
have made out a case for possession under para-
graph (h) of section 15(1) of the Ordinance and
their claim for possession must succeed as does
their claim for arrears of rent and mesne profits.
The plaintiffs are also entitled to the costs of
this action.

10

Sd: F. A. Chua

JUDGE

Dated this 24th day of November 1966.

Certified true copy

Sd: Illegible
Private Secretary to Judge
Court No. 2
High Court, Singapore.

20

23.

No.5

FURTHER HEARING

In the High
Court in
Singapore

Thursday, 24th November, 1966

Coram: CHUA, J.

No.5
Further
Hearing
24th November
1966

Counsel as before.

I deliver judgment.

Judgment for plaintiffs and costs.

Mesne profits from 1st November, 1964 at
\$192-50 p.m. up to date of delivery of possession.

10 Rents paid into Court to be paid out to the
plaintiffs or their solicitors.

Ess: I ask for time remove. The defendants
big importers of glass sheets and carry
big stocks. They have contract of
supplying glass for Housing Board.
Difficult to get alternative premises
and they need time, at least 6 months.

Elias: I leave it to the Court.

20 Time granted up to 31st May, 1967 to give
possession.

Sgd. F.A. Chua.

In the High
Court in
Singapore

No.6

FURTHER HEARING

No.6
Further
Hearing
25th November
1966

25th November, 1966

Counsel as before.

Elias: The question is whether the costs should be on the Higher or Lower Scale. Mesne profits ordered came to \$5967-50 from 1st November, 1964 to 31/5/67. Value of possession is in excess of \$5000. Allagappan Chettiar v. Coliseum Cafe 1962 M.L.J. 111 at 112, para. E m.c., 1. I ask Court to say costs should on Higher Scale. O.62 R.9 "subject matter of the action exceeds \$5000." R.9(2) - special grounds, Schedule C Rule 15 of District Court Rules. Mesne profits tendered as rents as they claimed to be tenant, if we accept they would say we accept them as tenant.

10

20

Ess: This is claim for possession, not disputed on title. So subject matter does not exceed \$5000. Sum tendered could have been accepted. If mesne profits stopped at date of judgment it would be less than \$5000.

Order: Special grounds - High Scale, O.62 R.9(2).

Sgd. F.A. Chua.

30

25.

No.7

ORDER OF COURT

In the High
Court in
Singapore

24th day of November, 1966

No.7
Order of
Court
24th November
1966

10 UPON this action coming on for trial on the
16th day of November, 1966, before the Honourable
Mr. Justice Federick Arthur Chua in the presence
of Counsel for the Plaintiffs and for the
Defendants AND UPON reading the Pleadings, the
Plaintiffs' Interrogatories delivered herein on
the 31st day of March, 1965, and the Defendants'
Answers thereto delivered on the 30th day of
April, 1965, AND UPON hearing the evidence
adduced on behalf of the Plaintiffs and what was
alleged by Counsel aforesaid IT WAS ORDERED that
this action do stand for judgment AND this action
standing for judgment this day in the presence of
Counsel aforesaid.

20 IT IS ADJUDGED that the Plaintiffs do recover
possession of the premises known as No. 203 South
Bridge Road, Singapore, AND that the Defendants do
deliver up possession of the said premises to the
Plaintiffs not later than the 31st day of May, 1967;

AND IT IS ORDERED that the sum of \$6,352-50
paid into Court by the Defendants be paid out to
the Plaintiffs in satisfaction of arrears of rent
for the said premises for the period from the 1st
day of February, 1962, to the 31st day of October,
1964;

30 AND IT IS ADJUDGED that the Plaintiffs do
recover against the Defendants mesne profits at
the rate of \$192-50 per month for the period from
the 1st day of November, 1964, to the date of
delivering up of possession of the said premises,
and the Plaintiffs' costs in this action be taxed
on the higher scale of Schedule "C" of the Rules
of the Supreme Court, 1934.

Entered this 19th day of December, 1966, at
2.35 p.m. in Volume XCVIII Page 121.

40

Sd: Tay Kim Whatt
Dy. Registrar

Sd: Ow

26.

No.8

In the Federal
Court of
Malaysia

NOTICE OF APPEAL

(Appellate
Jurisdiction)

IN THE FEDERAL COURT OF MALAYSIA

No.8

CIVIL APPEAL NO Y48 OF 1966

Notice of
Appeal
16th December
1966

NOTICE OF APPEAL

TAKE NOTICE that 1. Ho Tong Cheong, 2. Ho Sun Cheong, 3. Ho Kok Cheong all carrying on business under the firm name of Kwong Kum Sun Chan the Appellant above named being dissatisfied with the decision of the Honourable Mr. Justice Chua given at Singapore on the 24th day of November, 1966 in the above suit appeals to the Federal Court against the whole of the said judgment.

10

Dated this 16th day of December, 1966.

Sd: R. C. H. Lim & Co.

Solicitors for the above named
Appellant.

To:-

The Registrar,
High Court,
Singapore.

20

To:-

The Chief Registrar,
The Federal Court,
Kuala Lumpur.

To:-

Messrs. Elias Brothers,
Solicitors for the above named
Respondent, Singapore.

30

The address for service of the Appellant is care of Messr. Richard Chuan Hoe Lim & Company of No. 34A, Market Street, Singapore.

27.

No.9

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. Y48 OF 1966

In the Federal
Court of
Malaysia

No.9
Memorandum of
Appeal
25th January
1967

MEMORANDUM OF APPEAL

10 Ho Tong Cheong, Ho San Cheong and Ho Kok
Cheong all carrying on business under the firm
name of Kwong Kum Sun Chan the Appellants above
named, appeal to the Federal Court against the
whole of the Judgment of the Honourable Mr.
Justice Chua given at Singapore on the 24th day
day of November 1966, on the following grounds:

20 1. The Learned Judge has erred in law in
holding that the Appellants have "knowingly"
committed breaches of the Municipal Ordinance
in that if at all there were any breaches of
the Municipal Ordinance there was no evidence or
insufficient evidence for the Learned Judge to
come to the conclusion that such breaches were
"knowingly" committed.

30 2. On the evidence the Learned Judge was wrong
in deciding that the breaches committed by the
Appellants would if made out in the proceedings
against the Respondents lead to a conviction of
the Respondents and that will lead to a fine,
penalty or forfeiture as there were no proceedings
or notice of intending proceedings against the
Respondents nor was there any complaint lodged
under section 392 of the Municipal Ordinance in
respect of the alleged breaches committed by
the Appellants under the said Ordinance.

40 3. The Learned Judge has erred in law in
holding that the Respondents have made out a case
for possession under section (h) of section 15(1)
of the Control of Rent Ordinance (Cap.242) as
there is no evidence whatsoever to show that the
Respondents have been exposed to any fine penalty
or forfeiture and especially when section 144 of
the Municipal Ordinance is already repealed.

In the Federal Court of Malaysia

No.9 Memorandum of Appeal 25th January 1967 (Contd.)

4. Moreover, in view of the evidence of LIM SIAK KOON (P.W.1) the exhibits referred to, section 169 of the Local Government Ordinance, 1957 section 179 of the Local Government Integration Ordinance, 1963, other provisions of the said Ordinance and the circumstances of the case the Learned Judge has erred in law in holding that the Respondents have made out a case under paragraph (h) of section 15(1) of the Control of Rent Ordinance (Cap.242) as it should not be held that the Respondents were exposed to any fine penalty or forfeiture under the Municipal Ordinance.

10

5. The Learned Judge had also erred in law in failing to exercise the discretion vested in him under section 15 of the Control of Rent Ordinance (Cap.242) and should have exercised his discretion in favour of the Appellants in the light of the dates of the Notice to Quit, the commencement of the proceedings and the hearing of the action, the provisions of the Local Government Ordinance 1957, the Local Government Integration Ordinance 1963 and the circumstances of the case.

20

6. The Appellants humbly pray that this Honourable Court will set aside the Judgment for possession against the Appellants and make such order as this Honourable Court may deem fit.

Dated this 25th day of January, 1967.

Sd: Oehlers & Choa

Solicitors for the above named Appellants

30

To:- (1) The Registrar, High Court, Singapore.

(2) The Registrar, Federal Court, Kuala Lumpur.

and (3) The above named Respondents and to their Solicitors Messrs Elias Brothers, Singapore.

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The address for service of the Appellants is at No.20, Malacca Street, Singapore.

JUDGMENT OF BUTTROSE, J.

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

In the Federal
Court of
Malaysia

No.10
Judgment of
Buttrose J.
6th April 1967

Coram: Wee Chong Jin, C.J., Singapore
Tan Ah Tah, F.J.
Buttrose, J.

JUDGMENT OF BUTTROSE, J.

10 In this action the plaintiff claimed possession
of premises at No.203, South Bridge Road, Singapore,
of which the defendants were monthly tenants on the
ground that they had knowingly committed breaches
of the Municipal Ordinance and the Building By-laws
made thereunder affecting the premises which exposed
the plaintiff to a penalty or fine.

20 Section 14 of the Control of Rent Ordinance
(Cap.242), (hereinafter referred to as 'the
Ordinance'), provides that "no order or judgment
for the recovery of possession of any premises
comprised in a tenancy shall be made or given except
in the cases set out in this Part of this Ordinance".

The plaintiff claimed it was entitled to
possession under section 15(1)(h) of the Ordinance
which reads as follows :-

"15(1) In the case of all premises such an
order or judgment as is referred to
in section 14 of this Ordinance may be
made in any of the following cases,
namely:-

30 (h) where the tenant or any other person
occupying the premises under him has
knowingly committed a breach of any
written law regulating any business
carried on upon the premises or of
any provision of the Municipal
Ordinance or of any rule or by-law
made thereunder affecting the
premises which exposes the landlord
to any penalty, fine or forfeiture."

In the Federal
Court of
Malaysia

No.10
Judgment of
Buttrose J.
6th April 1967
(Contd.)

The plaintiff's case was that by virtue of section 144(12) of the Municipal Ordinance which was in force at the material time, namely, in July, 1961, the building operations commenced or carried out by the defendants were deemed to have been commenced or carried out by it and it was liable for breaches and by section 144(10) of the same Ordinance it was liable to a fine and a mandatory order might be made requiring it to alter or demolish the building.

10

The defendants admitted that they commenced and carried out the building operations particulars of which were set out in the statement of claim and that the work was commenced and completed in July, 1961. Further it was not in dispute that the defendants carried out the work without submitting a plan to the proper authority or that there was a breach of section 144(7) of the Municipal Ordinance or that the work carried out constituted breaches of the Building By-laws.

20

It was argued that it had not been established in this case that the defendants committed the breaches 'knowingly' as required by the section. This raised a clear cut issue of fact and was dealt with by the Trial Judge in this way:-

"In this case the evidence is that in November, 1960, the defendants submitted a plan signed by themselves, their architect and the plaintiffs to the proper authority. The plan was for the alteration to the shop front of the premises. In April, 1961, an amended plan was submitted. Both these plans show an unauthorised glass corrugated iron lean-to roof over the open area at the back of the premises which was to be demolished. The plans were approved on 21st November, 1960, and 19th May, 1961, respectively. In July, 1961, the defendants carried out the building operations over the open area at the back of the premises knowing full well that a covering over the open area was illegal. There is no doubt about it that the defendants committed the breaches knowingly."

30

40

I am unable to find any reason for disturbing the Trial Judge's finding of fact with which I am in complete agreement.

In the Federal
Court of
Malaysia

In the light of this finding and in the circumstances of this case it is unnecessary to consider or pronounce upon the precise interpretation to be placed on the word 'knowingly'.

No.10
Judgment of
Buttrose J.
6th April 1967
(Contd.)

In Sarah Cashin v. Goh Kah Seng (1955)
M.L.J.52 at p.53 Whitton, J. interpreted it in
this way:-

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"... the effect of adding the word 'knowingly' appears to be that before a tenant is deprived of this protection not only must he have committed a breach which exposes his landlord but also he must have known that he was committing a breach at the time of doing so."

In Nathan Brothers v. Tong Nam Contractors Ltd., (1959) M.L.J. 240 at p.241 Ambrose, J. in accepting the interpretation adopted by Whitton, J. said:-

20

"I accepted the above-cited interpretation of the word 'knowingly' by Whitton, J. and came to the conclusion that, before the defendants could be deprived of the protection of the Ordinance under section 15(1)(h) they must be proved to have known that they were committing a breach of the Municipal Ordinance at the time of doing so."

30

In the case before us the Trial Judge indicated that he thought Ambrose, J. had gone too far and went on to say:-

"In my view it cannot be read into paragraph (h) that only people who knew the provisions of the Municipal Ordinance are covered by the paragraph. The word 'knowingly', in my view, qualifies the nature of the act and it merely means that a defendant knew what he was doing, that is, he did it consciously or intentionally."

40

In view of the Trial Judge's positive finding of fact to which I have referred that the defendants

In the Federal
Court of
Malaysia

No.10
Judgment of
Buttrose J.
6th April 1967
(Contd.)

carried out the building operations knowing full well that they were illegal and there was no doubt that they committed the breaches knowingly his statement is pure obiter and I do not wish to be thought that I necessarily accept it.

Suffice it to say that in any event and on anyone of these interpretations of the word 'knowingly' the plaintiff, in my opinion, has succeeded in making out a case.

Before leaving this aspect of the case I think I should refer to the fact that the defendants elected to call no evidence at the trial. In these circumstances the Trial Judge was entitled to consider the effect of section 107 of the Evidence Ordinance which provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The fact as to whether the defendants knowingly committed the breaches complained of was surely something especially within their own knowledge. Furthermore there was the presumption provided by section 115(g) of the same Ordinance that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. 10 20

I turn now to deal with the defendants' argument that the plaintiff failed to establish that these breaches exposed it to a penalty, fine or forfeiture. 30

The argument proceeded on these lines. In July 1961 the law in force regarding building operations was the Municipal Ordinance and the Local Government Ordinance. Both these Ordinances were repealed on the coming into force of the Local Government Integration Ordinance in September, 1963. It is true that by virtue of section 144(12) of the Municipal Ordinance the owner of the land was liable for the breaches committed by his tenant but by section 392 of the same Ordinance no person was liable to any fine or penalty unless a complaint respecting the offence was made within twelve months. It was contended that the plaintiff was only exposed to a penalty, fine or forfeiture when a complaint was made and one never was and now never could be made in this case. 40

Furthermore, there was a substantial alteration in the law regarding the liability of the owner for by section 167(17) of the Local Government Ordinance which came into force in 1957 the owner was liable only if the person who actually commenced or carried out the work was not known or could not be found. Under the Local Government Integration Ordinance now in force the person liable is not the owner but the person who actually carried out the work and by section 179 of that Ordinance the defendants in this case are not now liable to a fine or penalty as a complaint was not made within the prescribed period of three years next after the date of the commission of the offence.

In the Federal
Court of
Malaysia

No.10
Judgment of
Buttrose J.
6th April 1967
(Contd.)

It was argued that in determining whether the plaintiff was entitled to possession under section 15(1)(h) of the Ordinance the Court must look at the facts existing at the time the contractual tenancy was terminated, namely, on the 31st October, 1964, or at the time when the writ was issued, namely, the 1st March, 1965, and that on neither of these dates was the plaintiff exposed to any penalty, fine or forfeiture.

In support of this proposition reliance was placed on *Zbytniewski v. Broughton* 1956 3 A.E.R. 348. This case turned on the construction of section 65(1) of the Housing Act, 1936 which provides that where a dwelling house is overcrowded in such circumstances as to render the occupier thereof guilty of an offence, nothing in the Rent and Mortgage Interest Restriction Acts, 1920 to 1933, shall prevent the Landlord from obtaining possession of the house. It was held that on the true construction of section 65(1) the restriction on recovery of possession imposed by the Rent Acts was removed only while an offence of overcrowding continued; in that case there was not overcrowding "in such circumstances as to render the tenant guilty of an offence" within section 65(1) at the date which was the material date, namely, the date of the trial, and accordingly the landlord was not entitled to possession but as Hodson L.J. pointed out at p.357"... the whole purpose of that Part of the Act has to do not with the assistance of landlords or with the protection

In the Federal
Court of
Malaysia

No.10
Judgment of
Buttrose J.
6th April 1967
(Contd.)

of tenants but with the prevention of over-crowding."

In the present case the Trial Judge dealt with the point in this way. He said:-

"The object of the Rent Control Ordinance is to fetter landlords and take away their common law rights and not to afford the tenant a statutory defence. In my view immediately a tenant commits a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or any Rule or By-law made thereunder affecting the premises he removes the fetter on the landlord's right to recover possession and he loses the protection of the Ordinance and the landlord's right of action for recovery of possession arises."

10

Support for this view, with which I agree, is found in *Chung Lai Heng v. Murugappa Chettiar* 1952 M.L.J. 232 and *Ang Ah Bak v. S.E.A.C. Co.*, 1966 2 M.L.J. 45 which was upheld by the Federal Court whose judgment has not yet been reported.

20

Once the defendants committed a breach as outlined in section 15(1) (h) of the Ordinance they immediately lost the protection given them by the Ordinance and laid themselves open to ejection by the plaintiff Bank which may at any time thereafter determine the contractual tenancy and recover possession of the premises from the defendants.

30

I think perhaps I should add that exposure to a penalty, fine or forfeiture means that there must be exposure to conviction, exposure to prosecution is not enough, and there is no exposure to conviction unless facts exist which would support a conviction. This was made clear in the Federation Court of Appeal decision in *Hooi Chuk Kwong v. Lim Saw Choo* 1958 2 M.L.J. 5 at p.8 which on this point dissented from the judgment of Whitton, J. in *Sarah Cashin v. Goh Kah Seng* supra.

40

The Trial Judge appreciated this position

because he arrived at the conclusion, with which I agree, that the breaches committed by the defendants would, if made out in proceedings against the plaintiff, lead to its conviction which would in its turn lead to a penalty, fine or forfeiture.

There was no substance in the other points argued on behalf of the appellants.

10 For these reasons, in my view, the decision of the Trial Judge was right and the appeal must be dismissed with costs.

Sd. Murray Buttrose
JUDGE.

I agree.

Sd. Wee Chong Jin
CHIEF JUSTICE
SINGAPORE.

I agree.

20

Sd. Tan Ah Tah
FEDERAL JUDGE.

Singapore, 6th April, 1967.

Certified true copy.

Sd: Illegible
Private Secretary to Judge
Court No.3
High Court, Singapore.

In the Federal
Court of
Malaysia

No.10
Judgment of
Buttrose J.
6th April 1967
(Contd.)

In the Federal
Court of
Malaysia

No.11

ORDER OF THE FEDERAL COURT

No.11
Order of the
Federal Court

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

6th April 1967

CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN,
CHIEF JUSTICE, SINGAPORE;

THE HONOURABLE MR. JUSTICE TAN AH TAH,
JUDGE, FEDERAL COURT, MALAYSIA; and

THE HONOURABLE MR. JUSTICE M. BUTTROSE,
JUDGE, HIGH COURT, SINGAPORE.

IN OPEN COURT

10

THE 6TH DAY OF APRIL, 1967

O R D E R

THIS APPEAL coming on for hearing on the 17th day of March, 1967, in the presence of Mr. Tan Peng Khoo of Counsel for the Appellants and Mr. S.H.D. Elias of Counsel for the Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING what was alleged by Counsel aforesaid IT WAS ORDERED that the said Appeal should stand for Judgment AND the same coming on for Judgment this day in the presence of Counsel aforesaid IT IS ORDERED that the said Appeal be and is hereby dismissed AND IT IS ORDERED that the costs of the Appeal herein be taxed as between party and party on the Higher Scale of Costs of the Second Schedule to the Rules of the Supreme Court of the Federation of Malaya, 1957, and paid by the Appellants to the Respondents AND IT IS FURTHER ORDERED that the sum of \$500 paid into Court by the Appellants as security for costs be paid out to the Respondents or their Solicitors towards the costs awarded herein.

20

30

GIVEN under my hand and the Seal of the Court
this 6th day of April, 1967.

(L.S.)

Sd: Ho
REGISTRAR
FEDERAL COURT, MALAYSIA.

37.

No.12

NOTICE OF MOTION FOR
CONDITIONAL LEAVE TO APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

NOTICE OF MOTION

10 TAKE NOTICE that the Court will be moved on
Thursday the 25th day of May 1967 at 10.30 o'clock
in the forenoon or so soon thereafter as Counsel
can be heard by Mr. Tan Peng Khoo of Counsel for
the Appellants for leave for the Appellants to
20 appeal to Her Majesty in Council against the
Judgment of the Federal Court pronounced herein
on the 6th day of April 1967 and for a certificate
that as regards the amount and value and the
nature of the legal issues involved this case is
a fit one for appeal to Her Majesty in Council
and further that the order for possession contained
in the said judgment be stayed and for such other
order or relief as this Honourable Court deems fit.

Dated this 10th day of May, 1967.

Sd: Oehlers & Choa
Solicitor for the Defendants/Appellants

Dated at Singapore this 10th day of May,
1967.

(L.S.) Sd: Tay Kim Whatt
Dy. R E G I S T R A R
Federal Court, Malaysia

Filed this 10th day of May, 1967.

In the Federal
Court of
Malaysia

No.12
Notice of
Motion for
conditional
leave to appeal

10th May 1967

In the Federal
Court of
Malaysia

No.13

AFFIDAVIT OF HO KOK CHEONG

No.13
Affidavit of
Ho Kok Cheong

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

10th May 1967

AFFIDAVIT OF HO KOK CHEONG

I, HO KOK CHEONG of No.203 South Bridge Road, Singapore, solemnly and sincerely affirm and say as follows:

1. I am one of the Appellants in Federal Court Civil Appeal No. Y48 of 1966 and am fully authorised to make this affidavit.

10

2. On the 6th day of April 1967 this Honourable Court delivered a Judgment dismissing with costs the Appellants' appeal against the Judgment of the High Court in Singapore in High Court Suit No.312 of 1965.

3. I am desirous of appealing to Her Majesty in Council against the disallowance by this Honourable Court of the above appeal.

4. The said Judgment is a final Judgment or Order in a civil matter in respect of the possession of the land and premises known as No.203 South Bridge Road, Singapore which are subject to the Control of Rent Ordinance on the ground that the Appellants having knowingly committed breaches of the Municipal Ordinance and the Building By-laws made thereunder affecting the premises which have exposed the Respondents to penalty or fine.

20

5. I am willing to undertake as a condition for leave to appeal, to enter into good and sufficient security for the satisfaction of this Honourable Court in such sum as this Honourable Court may duly prescribe and to conform to any other conditions that may be duly imposed.

30

6. I pray that this Honourable Court will be pleased to grant the Appellants leave to appeal

39.

to Her Majesty in Council and for stay of the
Order of possession made by this Honourable Court
on the 6th day of April 1967.

AFFIRMED at Singapore by)
the above named HO KOK)
CHEONG this 10th day of)
May, 1967.)

Sd: Ho Kok Cheong

Before me,

Sd: Mesui Chen
A COMMISSIONER FOR OATHS

In the Federal
Court of
Malaysia

No.13
Affidavit of
Ho Kok Cheong

10th May 1967
(Contd.)

40.

In the Federal
Court of
Malaysia

No.14

AFFIDAVIT OF HO KOK CHEONG

No.14
Affidavit of
Ho Kok Cheong

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

22nd May 1967

AFFIDAVIT OF HO KOK CHEONG

I, HO KOK CHEONG of No.203 South Bridge Road, Singapore, solemnly and sincerely affirm and say as follows:-

1. I crave leave to refer to my Affidavit dated and filed herein on the 10th day of May, 1967. 10
2. The tenancy of No.203 South Bridge Road, Singapore, is of considerable value to me and the value thereof should exceed \$5,000-00.
3. In point of fact, the expenses incurred in respect of the renovation and the repairs to the said premises by the Appellants are much more than the sum of \$5,000.00.
4. Moreover the costs of the action have been taxed on the higher scale. 20
5. I crave leave to refer to the Record of Appeal before this Honourable Court especially as to the evidence and the legal issues involved in this case and also especially when Section 144 of the Municipal Ordinance which was relied on by the Respondent has been repealed even prior to the Notice to Quit issued by the Respondent and the commencement of these proceedings.
6. Further, up to date, there is still no prosecution or Notice of Prosecution against the Respondent for the alleged breaches of the Municipal Ordinance. 30
7. I verily believe that the Appellants have a good and proper case for appeal to Her Majesty in Council.
8. This Honourable Court has ordered that the

possession of the said premises No. 203 South Bridge Road, Singapore, be given to the Respondent by the 30th June, 1967 and if this Honourable Court deems fit to allow me leave to appeal to Her Majesty in Council then I respectfully pray that this Honourable Court will grant me a stay of execution or a stay of the execution for possession of the said premises No. 203 South Bridge Road Singapore, pending the appeal to Her Majesty in Council in respect of this case. If the Appellants are to give possession of the said premises to the Respondent pending the appeal and if the Appellants are successful in the appeal it will cause considerable hardship to the Appellants and the Appellants may not be able to be restored back into the said premises by that time.

10

20

9. The Appellants will be ready and willing to give such security as this Honourable Court may deem fit to order and the Appellants will also be ready and willing to pay all the rents or mesne profits for the said premises to the Respondent during the period when the appeal to Her Majesty in Council is pending.

Affirmed at Singapore by)
 the above named HO KOK)
 CHEONG this 22nd day of) Sd. Ho Kok Cheong
 May, 1967)

Before me,

Sd. Mesui Chen

A COMMISSIONER FOR OATHS

30

In the Federal Court of Malaysia

No.14
 Affidavit of
 Ho Kok Cheong

22nd May 1967
(Contd.)

In the Federal
Court of
Malaysia

No.15

ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL

No.15
Order granting
conditional
leave to appeal

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

25th May 1967

CORAM: THE HONOURABLE MR. JUSTICE TAN AH TAH,
Judge, Federal Court, Malaysia.

IN OPEN COURT

THIS 25TH DAY OF MAY, 1967

ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL

10

UPON MOTION preferred unto Court this day by Mr. Tan Peng Khoo of Counsel for the Appellants above named in the presence of Mr. Simon Elias of Counsel for the above named Respondent AND UPON READING the Notice of Motion dated the 10th day of May 1967 and the affidavits of Ho Kok Cheong affirmed and filed herein on the 10th day of May 1967 and the 22nd day of May 1967 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Appellants to appeal to Her Majesty in Council against the Judgment of the Federal Court pronounced herein on the 6th day of April 1967 upon the following conditions:

20

1. That the sum of \$5,000-00 be paid into Court as security for costs within one month from the date hereof.

2. That the Record of Appeal be prepared and despatched to England within three (3) months from the date hereof.

30

AND IT IS FURTHER ORDERED that execution of the Judgment for possession of the premises No. 203 South Bridge Road, Singapore, be stayed pending the said Appeal to Her Majesty in Council AND IT IS LASTLY ORDERED that the costs of this Application be costs in the cause.

43.

GIVEN under my hand and the Seal of the
Court this 25th day of May 1967.

Sd: Tay Kim Whatt

Dy. R E G I S T R A R

In the Federal
Court of
Malaysia

No.15
Order granting
conditional
leave to appeal

25th May 1967
(Contd.)

In the Federal
Court of
Malaysia

No.16

ORDER GRANTING FINAL
LEAVE TO APPEAL

No.16

Order granting
final leave to
Appeal

IN THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE

(APPELLATE JURISDICTION)

22nd August
1967

CORAM: THE HONOURABLE MR. JUSTICE TAN AH TAH,
Judge, Federal Court, Malaysia.

IN OPEN COURT

THIS 22ND DAY OF AUGUST, 1967

10

O R D E R

UPON MOTION preferred unto the Court this day by Mr. Tan Peng Khoo of Counsel for the Appellants above named in the presence of Mr. J.E.D. Elias of Counsel for the above named Respondent AND UPON READING the Notice of Motion dated the 10th day of August 1967 and the affidavit of Ho Tong Cheong affirmed on the 8th day of August 1967 and filed herein on the 10th day of August 1967 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that Final Leave be and is hereby granted to the above named Appellants to appeal to her Majesty in Council against the Judgment of the Federal Court pronounced herein on the 6th day of April 1967 disallowing the Appeal against the Judgment of Mr. Justice Chua given at Singapore on the 24th day of November 1966 AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the cause AND IT IS LASTLY ORDERED that the parties hereto be at liberty to apply.

20

30

GIVEN under my hand and the seal of the Court this 22nd day of August, 1967.

Sd: Tay Kim Whatt

Dy. REGISTRAR
FEDERAL COURT, MALAYSIA

45.

No.17

ORDER (amending Order 22nd
August 1967) granting leave
to appeal to the Judicial
Committee of the Privy Council

IN THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL
NO. Y48 OF 1966

In the Federal
Court of
Malaysia

No.17

Order granting
leave to appeal
to the Judicial
Committee of
the Privy
Council

25th September
1967

10

Between

1. Ho Tong Cheong
 2. Ho San Cheong
 3. Ho Kok Cheong
- all carrying on business under the
firm name of Kwong Kum Sun Chan
... Appellants

And

Oversea-Chinese Banking
Corporation Limited
... Respondent

20

(In the Matter of Suit No.312 of
1965 in the High Court in Singapore

Between

Oversea-Chinese Banking
Corporation Limited
... Plaintiff

And

1. Ho Tong Cheong
 2. Ho San Cheong
 3. Ho Kok Cheong
- all carrying on business under the
firm name of Kwong Kum Sun Chan
... Defendants)

30

In the Federal
Court of
Malaysia

CORAM: THE HONOURABLE MR. JUSTICE TAN AH TAH,
Judge Federal Court, Malaysia.

IN OPEN COURT

No.17

THIS 25TH DAY OF SEPTEMBER 1967

Order granting
leave to appeal
to the Judicial
Committee of
the Privy
Council

25th September
1967

(Contd.)

UPON MOTION preferred unto this Court this day by Mr. Tan Peng Khoo of Counsel for the Appellants above named in the presence of Mr. Simon Elias of Counsel for the above named Respondent AND UPON READING the Notice of Motion dated the 14th day of September 1967 and the affidavit of Ho Tong Cheong affirmed and filed herein on the 14th day of September 1967 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the Order of Court dated the 25th day of May 1967 and the Order of Court dated the 22nd day of August 1967 be and the same are hereby amended by deleting the words "Her Majesty in Council" appearing in the 2nd and 13th lines on page 2 of the said Order of Court dated the 25th day of May 1967 and the 4th and 5th lines on page 2 of the said Order of Court dated the 22nd day of August 1967 and substituting therefor the words "the Judicial Committee of Her Britannic Majesty's Privy Council" AND IT IS FURTHER ORDERED that the costs of and incidental to this application be the Respondent's in any event.

10

20

Given under my hand and seal of the Court
this 25th day of September 1967.

DY. REGISTRAR
FEDERAL COURT, MALAYSIA.

30

47.

EXHIBITS

"A.B.1." (1) - Letter - Kwong Kum Sun Chan
to Eastern Realty Company Ltd.

KWONG KUM SUN CHAN.

KC/HO

12th September, 1960.

The Manager,
Eastern Realty Co., Ltd.,
China Building,
Singapore.

EXHIBITS
"A.B.1." (1)
Letter - Kwong
Kum Sun Chan
to Eastern
Realty Company
Ltd.

10 Dear Sir,

re: Renovation of premises No. 203
South Bridge Road, Singapore

12th September
1960

We would bring your kind attention to the above-mentioned matter, as our plans has already been submitted to you through Mr. Tan Kim Hock for your kind perusal and approval.

20 We shall be much obliged if you be kind enough to approve by duly signed and returned the plans for City Council approval propose, and all the charges will be borne by us.

Thanking you for your kind and prompt attention.

Yours faithfully,

Sd: Ho Kok Cheong
(Managing Partner)

"A.B.1." (2) - Letter - Kwong Kum Sun Chan
to Eastern Realty Company Ltd.

KWONG KUM SUN CHAN

EXHIBITS
"A.B.1." (2)
Letter -
Kwong Kum
Sun Chan to
Eastern
Realty
Company Ltd.
Undated

The Eastern Realty Co. Ltd.
China Building,
Chulia Street,
Singapore.

Dear Sirs,

re: Renovation of premises No. 203
South Bridge Road, Singapore

10

Further to our letter of 12th September,
should the Annual Value of the property be
increased because of the renovation carried
out, we agree to your making an application
to the Rent Board for an increase in rent in
accordance with the increase in the Annual
Value. If such application is turned down
or if no application is made, we further agree
to reimburse you for the actual increase in
assessment payable by you.

20

Yours faithfully,

Sd: Ho Kok Cheong
(Managing Partner)

49.

"A.B.1." (3) - Letter - Leicester &
Chen to Elias Brothers

Leicester & Chen

Singapore, 6th April, 1962.

Our Ref: WC/TBC/36-62
Yr. Ref: 2878/T

Exhibits
"A.B.1." (3)
Letter -
Leicester &
Chen to Elias
Brothers

Dear Sirs,

re: No. 203 South Bridge Road

6th April
1962

10 Further to our letter of the 3rd instant we
are instructed to write as follows.

The late Ho Kong Hoi (hereinafter called the
deceased) was the sole proprietor of Kwong Kum Sun
Chan a firm carrying on business of glass merchants
at the above named premises. According to the
particulars of registration of the firm dated the
26th July 1947, the business first commenced on the
1st of August, 1922.

20 On the 13th day of August, 1947 the deceased
died leaving a will in which he appointed Madam Lee
Wing Kay and Lee Chin Fei as Executors and Trustees.
Upon his death the sons of the deceased (Messrs. Ho
Tong Cheong, Ho Kok Cheong and Ho Sun Cheong)
carried on the father's business under the name of
Kwong Kum Sun Chan.

On the 22nd January, 1958, Madam Lee Wing Kay
and Lee Chin Fei formally took in Ho Tong Cheong as
a partner of the firm.

On the 24th March, 1958, Madam Lee Wing Kay and
Lee Chin Fei withdrew from the partnership.

30 On the 1st of April, 1958, Messrs. Ho Kok Cheong
and Ho Sun Cheong were formally taken in as partners
of Kwong Kum Sun Chan.

Our clients inform us that your clients and/or
their agents were aware of these changes to the firm
of Kwong Kum Sun Chan and, until your notice to quit

Exhibits

"A.B.1." (3)
Letter -
Leicester &
Chen to Elias
Brothers

6th April
1962
(Contd.)

addressed to Madam Lee Wing Kay and Lee Chin Fei, have given no indication that they object to Messrs. Ho Tong Cheong, Ho Kok Cheong and Ho Sun Cheong trading as Kwong Kum Sun Chan carrying on business at the above named premises.

Sometime in 1960 the firm of Kwong Kum Sun Chan, through its managing partner Mr. Ho Kok Cheong, approached your clients' agents, Messrs. Eastern Realty Ltd., regarding proposed renovations to the shop front of the above mentioned premises, and the agents dealt with Mr. Ho Kok Cheong as such managing partner.

10

We hope we have made it clear now, how the present partners of Kwong Kum Sun Chan have become your clients' tenants.

Yours faithfully,
Sd: Leicester & Chen.

Messrs. Elias Brothers,
Singapore.

51.

"A.B.1." (4) Letter - Elias
Brothers to Leicester & Chen

ELIAS BROTHERS.

6A, Raffles Place,
Singapore.

Our Ref: 2878/1A/T
Yr. Ref: WC/TBC/38-62

Exhibits

"A.B.1." (4)
Letter -
Elias Brothers
to Leicester &
Chen

7th April, 1962.

7th April 1962

10 Messrs. Leicester & Chen,
Singapore.

Dear Sirs,

re: No. 203, South Bridge Road

We thank you for your letter of the 6th instant and note what you say.

20 In reference to the 7th paragraph of your letter, we are instructed to inform you that our clients were not aware of the changes in the constitution of the firm of Kwong Kum Sun Chan, until we informed them of the result of our search at the Registry of Business Names in January last.

30 In reference to the 8th paragraph of your letter, we are instructed that though it may be that Messrs. Eastern Realty Co., Ltd. signed a plan in connection with the renovation of the shop front, we are instructed that, if they did so, they did not pay particular attention to the name of the person who signed the plan on behalf of the tenant, if indeed there was such a signature on the plan.

The circumstances mentioned in your letter would not result in a transmission of the tenancy from Mr. Lee Chin Fei and Madam Lee Wing Kay to your clients, Messrs. Ho Kok Cheong, Ho San Cheong and Ho Tong Cheong, and your clients have no status in relation to the premises.

52.

Exhibits
"A.B.1." (4)
Letter -
Elias Brothers
to Leicester &
Chen

7th April 1962
(Contd.)

Our clients therefore require your clients to deliver up vacant possession of the premises without further delay.

Yours faithfully,

Sd: Elias Brothers

53.

"A.B.1." (5) Letter - Leicester &
Chen to Elias Brothers

Leicester & Chen

27, Bank of China Building,
Singapore, 1.

Our Ref: WC/TBC/36-62
Yr. Ref: 2878/1A/T

Exhibits
"A.B.1." (5)
Letter -
Leicester &
Chen to Elias
Brothers

10th April, 1962.

10th April
1962

10 Dear Sirs,

re: 203, South Bridge Road

We thank you for your letter of the 7th instant.

Our clients Messrs. Kwong Kum Sun Chan consider that they are your clients' tenants of the above mentioned premises and as such will continue to occupy the said premises.

Yours faithfully,

Sd: Leicester & Chen.

20 Messrs. Elias Brothers,
Singapore.

c.c. to clients.

"A.B.1." (6) Letter - Elias Brothers to
Leicester & Chen

ELIAS BROTHERS

6A, Raffles Place,
Singapore.

Ref: 2878/1A/T

14th September, 1964.

Exhibits

"A.B.1." (6)
Letter -
Elias Brothers
to Leicester
& Chen

Messrs. Leicester & Chen,
Singapore.

10

Dear Sirs,

No. 203 South Bridge Road,
Singapore

14th September
1964

We refer to the correspondence resting with
your letter of the 10th May, 1962.

In reference to the allegation in the
penultimate paragraph of your letter, on further
consideration our clients have come to the
conclusion that they must accept the view that
notice to their agents, Eastern Realty Company
Limited, that your client Ho Kok Cheong,
was a partner of the firm of Kwong Kum Sun Chan,
should be treated as notice to themselves; and
that the subsequent acceptance of rent would
raise the inference of a surrender of the
original tenancy by Mr. Lee Chin Fei and Madam
Lee Wing Kay and the creation of a new tenancy
in favour of the then current partners of the
said firm, namely, your clients Ho Tong Cheong,
Ho San Cheong and Ho Kok Cheong.

20

30

It has recently come to our clients' notice
that your clients have carried out alterations to
these premises in breach of the provisions of
section 144 of the Municipal Ordinance, which
exposes our clients to penalty or fine.

55.

In the circumstances, our clients have instructed us to serve a notice to quit on your clients, which we have done. We forward a signed duplicate of the Notice to Quit herewith by way of additional service on your clients.

Yours faithfully,

Sd: Elias Brothers.

Exhibits

"A.B.1." (6)
Letter -
Elias Brothers
to Leicester
& Chen

14th September
1964
(Contd.)

Encl:

"A.B.1." (7) Notice to Quit from Elias Brothers to Ho Tong Cheong Ho San Cheong and Ho Kok Cheong all carrying on business under the firm name of Kwong Kum Sun Chan

Exhibits

ELIAS BROTHERS

"A.B.1." (7)
Notice to
Quit from
Elias Brothers
to Ho Tong
Cheong, Ho San
Cheong and Ho
Kok Cheong all
carrying on
business under
the firm name
of Kwong Kum
Sun Chan

To:

Ho Tong Cheong, Ho San Cheong
and Ho Kok Cheong carrying
on business in partnership
under the firm name of Kwong
Kum Sun Chan, No. 203 South
Bridge Road, Singapore.

10

NOTICE TO QUIT

14th September
1964

As instructed by our clients Oversea-Chinese Banking Corporation Limited we hereby on their behalf give you notice to quit and deliver up possession of the premises known as No. 203 South Bridge Road, Singapore, which you hold of our clients as monthly tenants, on the 31st day of October, 1964.

20

Dated this 14th day of September, 1964.

Sd: Elias Brothers

Solicitors for Oversea-Chinese
Banking Corporation Limited.

"A.B.2." 1. PLAINTIFFS' INTERROGATORIESINTERROGATORIES

Exhibits
"A.B.2."
1. Plaintiffs'
Interrogatories

31st March 1965

On behalf of the plaintiffs for the examination of the defendants Ho Tong Cheong, Ho San Cheong and Ho Kok Cheong, pursuant to Order XXX Rule 1 of the Rules of the Supreme Court, 1934.

- 10 1(a) Was there not originally an open area at the rear of the premises known as No: 203 South Bridge Road (hereinafter referred to as "the said premises")?
- (b) Is not the said area now completely covered?
- 2(a) Is not the said open area now covered by a floor?
- (b) Does not the said floor consist of wooden decking?
- (c) Is not the said wooden decking supported by 5" x 3" bearers and 6" x 3" trimmer joists?
- (d) If not, what is the support for the said floor?
- 20 3(a) Were not the outer walls enclosing the rear area of the said premises at the back and on both sides originally of the height of the first floor of the said premises?
- (b) If not, what was the original height of the said outer walls?
- (c) Are not the said outer walls now extended above the first floor level?
- (d) Is not the height of such extension in excess of 8 feet above the first floor level?
- 30 (e) If not, what is the height of such extension?
- (f) Are there not 2 windows in the rear wall extension?
- 4(a) Is not the rear area of the building, above

Exhibits
 "A.B.2."
 1. Plaintiffs
 Interrogator-
 ies

31st March
 1965
 (Contd.)

- the floor referred to in Interrogatory No.2,
 covered by a roof?
- (b) Is not the said roof supported at the rear
 and on both sides by the extended walls
 referred to in Interrogatory No. 3(c)?
- (c) Is not the said roof constructed of corrugated
 asbestos?
- 5(a) Do not eaves of the said roof overhang the
 adjoining premises?
- (b) Is not the extent of the said overhang 2 10
 feet?
- (c) If not, what is the extent of the overhang?
- 6(a) Is there not a ceiling above the floor
 referred to in Interrogatory No. 2 and
 below the roof referred to in Interrogatory
 No.4?
- (b) Is not the height of the said ceiling 8 feet
 8 inches at its highest end and 8 feet
 3 inches at its lowest end?
- (c) If not, what is the height thereof at its 20
 highest and lowest ends respectively?
- 7(a) Within the interior space enclosed by the
 extended walls referred to in Interrogatory
 No.3(c) and the ceiling referred to in
 Interrogatory No. 6, is there not a small
 enclosed room, which is a toilet containing
 a water-closet?
- (b) Is not the said toilet above the bathroom
 on the ground floor?
- (c) Is not the floor of the said toilet what 30
 was originally the flat concrete roof of
 the said ground floor bathroom, now overlaid
 with tiles?
8. Is there not a water tank installed above
 the said toilet?
9. Is there not a wash basin, with inlet water
 tap and outflow pipe, installed outside the
 said toilet?

- 10(a) Apart from the said toilet, is not the remainder of the interior space enclosed by the extended walls referred to in Interrogatory No. 3(c) and the ceiling referred to in Interrogatory No. 6 now used as a dining area, and containing (inter alia) a dining table, chairs and sideboard?
- 10 (b) If not, for what purpose is the space now used?
- 11(a) Is not the present staircase within the said premises only 30 inches in width?
- (b) If not, what is the width thereof?
12. Is not the said present staircase a replacement for, or alternatively, a reconstruction of the original staircase within the said premises?
- 20 13(a) Is there not now a passage way on the first floor of the said premises, leading from the rear to the front of the said premises?
- (b) Is not the said passage way only 3 feet wide?
- (c) If not, what is the width thereof?
- 14(a) Alongside the said passage way, is there not a room, and if so, of what dimensions?
- (b) Does the said room have any, and if so what natural light?
- 30 (c) Does the said room have any, and if so what natural ventilation?
- (d) Is not the height of the ceiling of the said room 8 feet 9 inches?
- (e) If not, what is the height thereof?
- (f) For what purpose is the said room now used?
- 15(a) Apart from the said room referred to in Interrogatory No.14 are there not other

Exhibits

"A.B.2."
1. Plaintiffs'
Interrogatories

31st March
1965

(Contd.)

Exhibits

"A.B.2."
1. Plaintiffs'
Interrogator-
ies

31st March
1965
(Contd.)

- rooms in the front part of the first floor of the said premises, and if so, of what dimensions?
- (b) Does each of such rooms have any, and if so what natural light? 10
- (c) Does each of such rooms have any, and if so what, natural ventilation?
- (d) What is the height of the ceiling of each of such rooms?
- (e) For what purpose is each of such rooms used? 10
16. If the answers to all or any of the following Interrogatories, namely, Interrogatories Nos. 1(b), 2(a), 3(c), 4(a), 5(a), 6(a), 7(a), 8, 9, 11(a), 12, 13(a), 14(a) and 15(a), be in the affirmative, -
- (a) On what date or dates was the work of constructing or converting each of the items referred to therein commenced? 20
- (b) On what date or dates was the work in respect of each such items completed?
- (c) Who directed or caused such work to be done?
- (d) Were any plans in respect of all or any of the said items approved by the competent authority?
- (e) If so, -
- (i) Who was the competent authority who approved each such plan? 30
- (ii) What is the reference number, date of submission and date of approval, respectively, of each such plan?
- (iii) Did the plaintiffs sign any, and if so which, of such plans?
17. Annexed hereto are 4 photographs marked

61.

A, B, C and D respectively:

- 10 (a) Does not the photograph marked A show the rear extended wall of the said premises with the 2 windows therein and one of the side extended walls? referred to in Interrogatory No.3 and the roof referred to in Interrogatory No. 4?
- (b) If not, what does it show?
- (c) Does not the photograph marked B show the staircase referred to in Interrogatory No.11?
- (d) If not, what does it show?
- (e) Does not the photograph marked C show the interior space referred to in Interrogatory No.7(a), with the toilet and water closet, water tank, wash basin, dining table, chairs and sideboard, referred to in Interrogatories Nos. 7, 8, 9 and 10 respectively?
- 20 (f) If not, what does it show?
- (g) Does not the photograph D show the passage way referred to in Interrogatory No.13, the room referred to in Interrogatory No.14 and one of the rooms referred to in Interrogatory No.15?
- (h) If not, what does it show?

Each of the said defendants is required to answer (either individually or jointly) all the above Interrogatories.

30 Delivered the 31st day of March, 1965.

Sd: Elias Brothers

Solicitors for the Plaintiffs

To the above named Defendants and to their Solicitors, Messrs. Richard Chuan Hoe Lim & Company, Singapore.

Exhibits

"A.B.2."
1. Plaintiffs'
Interrogatories

31st March
1965

(Contd.)

62.

EXHIBIT "A.B.2"

1. (a) Plaintiffs' Interrogatories

This is the Photograph marked "A" referred
to in Interrogatory No: 17.

EXHIBITS

"AB.2"
1. (a)
Plaintiffs'
Interroga-
tories

PHOTOGRAPH
"A"



63.

EXHIBIT "AB.2"

1. (b) Plaintiffs' Interrogatories

This is the Photograph marked "B" referred
to in Interrogatory No: 17.

EXHIBITS

"AB.2"

1. (b)
Plaintiffs'
Interroga-
tories

PHOTOGRAPH
"B"



64.

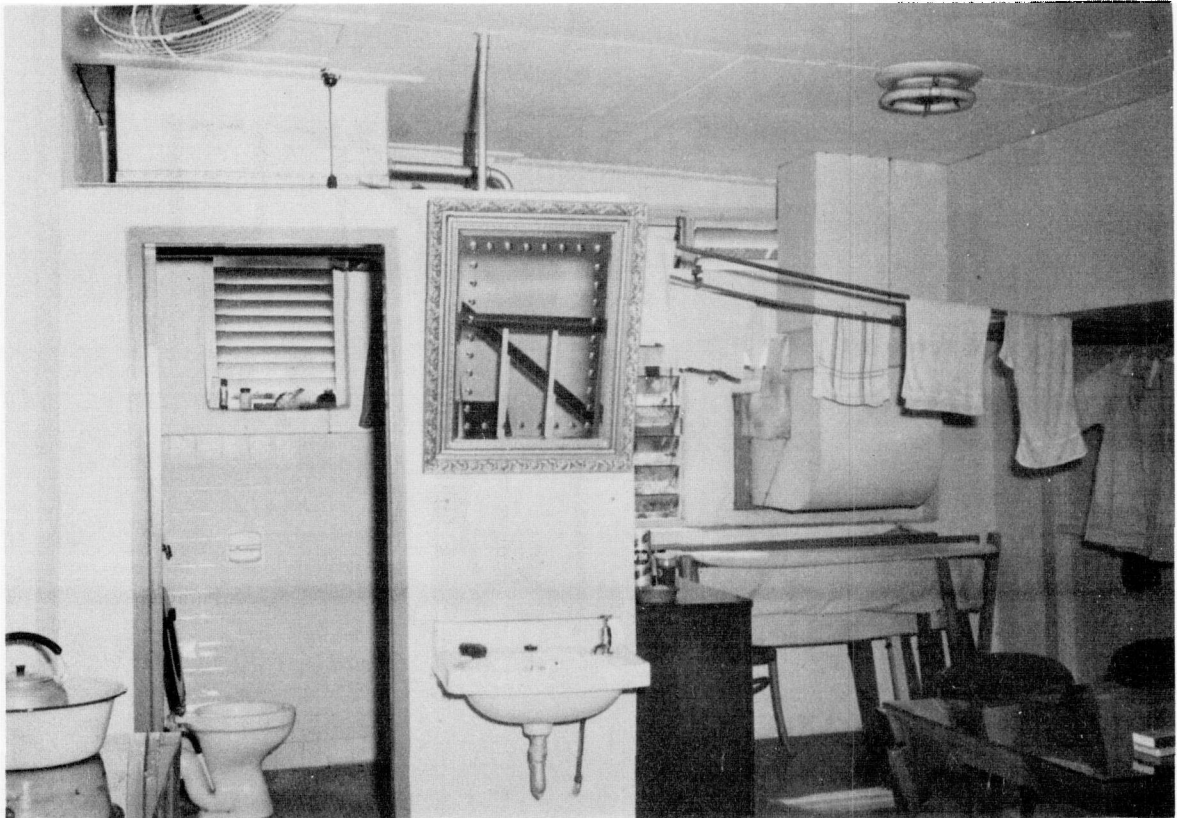
EXHIBIT "AB.2"

1. (c) Plaintiffs' Interrogatories

This is the Photograph marked "C"
referred to in Interrogatory No:17

EXHIBITS
"AB.2"
1. (c)
Plaintiffs'
Interroga-
tories

PHOTOGRAPH
"C"



65.

EXHIBIT "AB.2"

1. (d) Plaintiffs' Interrogatories

This is the Photograph marked "D"
referred to in Interrogatory No:17

EXHIBITS

"AB.2"

1. (d)
Plaintiffs'
Interroga-
tories

PHOTOGRAPH
"D"



EXHIBITS"AB.2"2. Defendants
Answer to
Interrogatories30th April
1965EXHIBIT "AB.2"
2. DEFENDANTS' ANSWERS TO
INTERROGATORIES

The answers of the above named defendants Ho Tong Cheong, Ho San Cheong and Ho Kok Cheong to the interrogatories for the examination of the above named plaintiffs.

In answer to the said interrogatories we the above named Ho Tong Cheong, Ho San Cheong and Ho Kok Cheong do jointly and severally affirm as follows. 10

1. The answers to interrogatories numbered 1(a), 1(b), 2(a), 2(b), 3(a), 3(c), 3(d), 3(f), 4(a), 4(b), 4(c), 5(a), 5(b), 6(a), 7(a), 7(b), 7(c), 8, 9, 10(a), 13(a), 13(b), 17(a), 17(c), 17(e), 17(g) are in the affirmative.

2. The answer to interrogatory 2(c) is yes, except that the trimmer joists are 7" x 4".

3. The answer to interrogatory 6(b) is yes except that the 8' 3" at the lowest and includes the air-conditioning duct of 2' 3". 20

4. The answer to interrogatory 11(a) is that the present staircase is 40 inches in width.

5. In answer to interrogatory 12 it is a replacement.

6. The answer to interrogatory 14(a) is that there are two rooms 13' 4" x 8' and 12' 2" x 8'.

7. The answer to interrogatory 14(b) is artificial light.

8. The answer to interrogatory 14(c) is the rooms are air-conditioned. 30

9. The answer to interrogatory 14(d) is the ceiling height is 10' 9".

10. The answer to interrogatory 14(f) is the rooms are used as offices.

11. The answer to interrogatory 15(a) is there is

is a room used as a store room 12' x 6' with ceiling height of 9'.

12. The answer to interrogatory 15(b) is the store has natural light but the other two rooms have artificial light.

13. The answer to interrogatory 15(c) is that the offices are air-conditioned and the store has natural ventilation.

10 14. The answer to interrogatory 15(d) is the ceiling height of the offices is 10' 9" and the ceiling height of the store is 9'.

15. Interrogatory 15(e) is answered by the above answers.

16. The answer to interrogatory 16(a) is that the work on the items referred to in 16 were carried out in the early part of July 1961.

17. The answer to interrogatory 16(b) is that the work was completed in the middle of July 1961.

20 18. The answer to interrogatory 16(c) is the defendants caused the work to be carried out.

19. The answer to interrogatory 16(d) is in the negative.

AFFIRMED to at Singapore,)
this 30th day of April,) Sd: Ho Tong Cheong
1965 by the above named) Sd: Ho San Cheong
defendants.) Sd: Ho Kok Cheong

EXHIBITS
"AB.2"

2. Defendants
Answer to
Interrogatories

30th April
1965

(Contd.)

Before me,

Sd: V. M. Kumarasamy

A COMMISSIONER FOR OATHS

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE
(APPELLATE JURISDICTION)

B E T W E E N :-

1. HO TONG CHEONG

2. HO SAN CHEONG

3. HO KOK CHEONG

all carrying on business under the
firm name of KWONG KUM SUN CHAN

Appellants
(Defendants)

- and -

OVERSEA CHINESE BANKING CORPORATION
LIMITED

Respondents
(Plaintiffs)

R E C O R D O F P R O C E E D I N G S

PARKER GARRETT & CO.,
St. Michael's Rectory,
Cornhill, London, E.C.3.

Solicitors for the Appellants

TITMUSS, SAINER & WEBB,
2, Serjeant's Inn,
London, E.C.4.

Solicitors for the Respondents