

No. 17 of 1972

IN THE JUDICIAL COMMITTEE OF THE

PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN  
SINGAPORE

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B E T W E E N

BANK NEGARA INDONESIA...APPELLANTS  
(PLAINTIFFS)

-and-

PHILIP HOALIM .....RESPONDENT  
(DEFENDANT)

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CASE FOR THE RESPONDENT

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MALLAL & NAMAZIE  
Advocates and Solicitors  
11 D'Almeida Street  
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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
28 MAY 1974  
25 RUSSELL SQUARE  
LONDON W.C.1

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CASE FOR THE RESPONDENT  
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RECORD

1. This is an Appeal by leave of the Court of  
Appeal in Singapore against the Judgment of that  
Court dated the 27th day of November, 1971 dis-  
missing the Appellants' Appeal against that part  
of the written Judgment of Chua, J. delivered on  
the 2nd day of June 1970 whereby he held that the  
Appellants were estopped from serving the Res-  
pondent a notice to Quit in view of the assur-  
ances which they or their agents had given to  
the Respondent and allowing the Respondent's  
Cross-Appeal against that part of the Judgment  
of Chua, J. whereby he held that the building  
known as No. 3, Malacca Street, Singapore and

p.91

p.63, 1.35

p.90, 1.12

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erected on Lot 195<sup>2</sup> of T.S. 1 is a new building within the provisions of the Control of Rent Ordinance, 1953, reversing same, and allowing the Respondent his costs of the Appeal and the Cross-Appeal to be taxed and paid by the Appellants.

p.90, l.20

2. Two questions therefore arise that is to say, whether the Appellants by their agents did in fact give assurances to the Respondent that if he agreed to move from that portion of the said building which he was then occupying, namely the front portion of the first floor, he would have the same protection as he already had under the Control of Rent Ordinance, and also that the Appellants would not ask him to leave the premises so long as he was practising his profession (which is that of an advocate and solicitor of the Supreme Court of Singapore, which he was and still is).

50 The learned trial Judge in a reserved judgment delivered on 2/6/70 has found as a fact that these assurances were in fact given.

p.59,l.30

The other question is whether the said building has as a result of the repairs and renovations effected to it lost its old identity and become a "new" building, and therefore outside the purview of the Control of Rent Ordinance, 1953.

60 3. There is evidence by the Defendant which is unrebutted that such assurances as are referred to in 2 above were in fact given, and reference is made to the following pages of the Record:--

p.39, 1.12 to p.40, 1.12.

p.41, 1.30 to 35.

p.43, 1.7 to 9, and 1.16 to 20.

p. 143, D9, 1.8 stipulates the

70 "contract sum of \$157,900/- or such other sum.

4. There is evidence both viva voce and on the documents exhibited that the building known as No. 3 Malacca Street, Singapore is not a "new" building, and reference is made to the following pages of the Record:--

(i) p. 97 Appellants' Exhibit AB.3

which gives the "cost of renovating No. 3 Malacca Street."

80 p. 142, Respondent's Exhibit D9, 1.16, which speaks of "additions and alterations to existing building (a) No. 3 Malacca Street, Singapore....."

p. 169, D9, 1.10 - "Specification of proposed additions and alterations to No. 3 Malacca Street....."

90 p. 169, D9, 11.12 to 19 defines the "Scope of work," and again refers to additions and alterations in accordance with the true intent and meaning of the drawings....."

p. 181, D9, 1.10 up to and including p. 186 which is the Appendix to D9 and sets out in summary form the "additions and alterations to No. 3....."

(ii) Viva voce evidence of VICTOR CHEW, the Appellant's architect as to No. 3 Malacca Street, before the repairs and renovations and the works effected:

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pp. 29, 30, 31, 32, 33, 34, 35 and 36.

Viva voce evidence of the RESPONDENT

- as to the building..... pp. 41a, 41  
1.27, 11.1-4.
- as to the lift..... p.42, 11. 18-20.
- as to the design..... p.42, 11.21-30.

(iii) What works then are completely new?

- (a) A new back staircase.
- (b) A new third floor.

(c) A new mezzanine floor,  
 covering about half the  
 length of the other floors.

What items are replacements?

(a) A new staircase to replace  
 the existing front stair-  
 case.

(b) A new lift well for the  
 reconditioned old lift.

120 What has been done to support  
 the new third floor?

New walls have been propped up  
 against and to strengthen the  
 existing walls, the foundation  
 of the new walls to the depth  
 of the old walls.

5. The Court of Appeal in a reserved judgment delivered on 27.11.71 affirmed the learned trial Judge's finding of

130 fact that assurances referred to herein  
 were in fact given by the Appellants  
 or their agents to the Respondent.

6. At the same time the Court of Appeal reviewed the learned trial Judge's finding that "the nature and extent of the structural alterations and other works carried out to the old

pp.88, 1.5.  
 p.87, 1.41  
 p.86, 11. 28  
 60 35.

building went far beyond repairs as p. 91  
contended by the defendant. In my  
140 view there has been such a fundamental  
change to the old building so that it  
can no longer be said to exist that a  
new building has replaced it."

7. Leave to appeal to the Judicial  
Committee of the Privy Council made by  
the Court of Appeal in Singapore was  
granted on the 24th day of January, 1972.

8. The Respondent humbly submits that  
this Appeal should be dismissed with  
150 costs for the following among other

R E A S O N S

(1) BECAUSE the learned trial Judge found  
as a fact that the Appellants had by their  
agents given him the assurances referred  
to herein.

(2) BECAUSE the finding that the premises  
are not a new building is based on the  
facts as adduced in the evidence and the  
documents.

(3) BECAUSE the Appellants have failed to  
establish that the building is a "new"  
building.

(4) BECAUSE "waiver" was not an issue  
before the learned trial Judge.

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