Privy Council Appeal No. 17 of 1972

Bank Negara Indonesia – – – – – – *Appellants*

v.

Philip Hoalim – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL IN SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH MAY 1973

Present at the Hearing:
LORD WILBERFORCE
LORD SIMON OF GLAISDALE
LORD SALMON

[*Delivered by* LORD WILBERFORCE]

This is an appeal from a judgment of the Court of Appeal in Singapore dismissing an appeal by the plaintiffs in the action from a judgment of Chua J. in the High Court of Singapore.

The claim in the action, by the present appellants as plaintiffs, was for possession of the front room on the third floor of a building owned by the appellants and known as No. 3 Malacca Street, Singapore, together with mesne profits from 1st March 1969. This room was occupied by the respondent as a tenant of the appellants; the appellants claimed that the tenancy was a monthly tenancy and that it had been validly determined by a notice to quit expiring on 28th February 1969. The respondent did not dispute the service of a notice to quit but relied upon two defences. First, he claimed protection under the Control of Rent Ordinance 1953: secondly, he set up an agreement, or understanding, made or entered into in 1958 between himself and one Lee Cheng Kiat, predecessor of the appellants, and claimed that the appellants were estopped from claiming possession of the premises against him.

The relevant facts are largely undisputed. The respondent, who is an Advocate and Solicitor, had, since 1945, occupied for the purpose of his profession the front portion of the first floor of No. 3 Malacca Street. He was a monthly tenant, paying a rent of $147·40 per month. The building was an old building consisting of a ground floor, first floor and second floor: it was owned by Lee Cheng Kiat. In 1957 the appellants entered into negotiation for the purchase of the building and it was conveyed to them in July 1959. It is not disputed that the various steps taken and negotiations carried on with regard to the building during this period were so carried on and taken on behalf of the appellants.

During 1958 extensive alterations were carried out to the building, costing, as the appellants claimed, $306,656·89. The landlord requested the respondent to vacate the room occupied by him but he refused to do so. In October 1958 the roof of the building was taken off so that rain came through and flooded the respondent's office: he threatened proceedings unless steps were taken to abate the nuisance. Thereupon two representatives of the landlord came to see him and asked him to move to the rear of the first floor so that work could be done in the front. They told him that, when the new third floor was ready, he could move to the front portion of it. They gave him an assurance, as the judge found, that he would have the same protection under the Control of Rent Ordinance as he had on the first floor and that the appellants would not ask him to leave the premises for as long as he was practising his profession there. On these assurances the respondent agreed to move from the front part of the first floor. He went first to the back portion of that floor and remained there for about three months. Then he moved to the front portion of the third floor.

On 12th January 1961 the respondent was served with a notice to quit, accompanied by a letter from the appellants' Solicitors informing him that the appellants were willing to grant a new tenancy at a rent of $517 per month. Negotiations took place, as a result of which he agreed to pay a rent of $280 per month and sign a lease for three years. A three year lease under seal was in fact prepared and executed to take effect from 1st March 1961. It contained a covenant by the respondent to yield up the demised premises at the determination of the tenancy. After the expiry of the three year term the respondent continued in possession as a monthly tenant until, as previously stated, the appellants served a notice to quit on 13th January 1969, expiring on 28th February 1969.

The first question is whether the respondent was protected under the Control of Rent Ordinance 1953. This Ordinance applied to premises defined, by s. 2, in the following terms:

> "'premises' means any dwellinghouse . . . office . . . and any other building . . . in which persons are employed or work *and any part of any such building let or sublet separately . . . but does not include any new building built or completed after 7th September 1947.*"

The question is whether, after the alterations made in 1958, No. 3 Malacca Street became a "new building". Whether an old building which has been altered, or reconstructed, becomes thereby a new building is a question of fact and degree—see *Eastern Realty Co. Ltd. v. Chan Hua Seng* (1967) 2 M.L.J. p. 195 *per* Wee Chong Jin C.J. and *Kai Nam v. Ma Kam Chan* [1956] A.C. 358.

In the present case the foundation of the old building and the lateral walls remained, but the front and rear facades were entirely removed and replaced. The existing floors remained, though that on the ground floor was broken up and a new concrete floor laid, and a new concrete floor was laid, in place of a wooden floor, at the rear of the first floor. A new third floor and a mezzanine floor were added, the existing walls being strengthened to support them. A new strong room and lift well were constructed: the existing wooden staircase was removed and two new concrete staircases were put in. All wooden partitions on the first and second floor were removed. A new roof was constructed.

On these facts Chua J. came to the conclusion that the works carried out went far beyond repairs: he considered that there had been such a fundamental change to the old building that it could no longer be said to exist as such. It became a new building.

This finding was reversed by the Court of Appeal. Apart from stating that the whole of the evidence had been reviewed, the Court relied on two specific arguments: first they said that the former building was still a substantial building which was in no danger of collapsing and that it could still be used for the professional or commercial activities of the tenants. Secondly they pointed out that, of the total of $306,656·89 spent, $73,000 was for air conditioning, $22,200 for rendering and tiling, and $11,150 for a new ceiling. This left only $200,206·89 for alterations and additions proper.

Their Lordships cannot, with respect, accept the validity of these arguments. It is not a necessary condition for the creation of a new building that the old building should be in danger of collapse: the test is the degree of change effected. And even if it is right to eliminate the items referred to by the Court of Appeal as decorative in character—a step which may be doubtful in the case of the installation of air conditioning—that still leaves the very substantial work of demolition and reconstruction which has already been referred to.

Their Lordships are of opinion that the careful examination of the work done, which was made by the learned trial judge, amply justifies his conclusion that a new building came into existence and that no sufficient ground has been shown for disturbing his finding.

Their Lordships proceed to deal with the second of the defences raised by the respondent. This is based upon the assurances, or promises, given to him on behalf of the appellants in order to persuade him to vacate the room occupied by him on the first floor. To resume the relevant facts: the respondent was in occupation as a monthly tenant of premises which were protected under the Control of Rent Ordinance 1953. The appellants urgently needed possession of these premises in order to proceed with the reconstruction of the building. Their representatives gave to the respondent, as the judge found on uncontradicted evidence, the assurances previously mentioned which were (i) that the respondent, if he moved to the third floor, would enjoy the same protection as he enjoyed in respect of the first floor under the Ordinance (ii) that, so long as he continued to practise his profession, the appellants would not ask him to leave.

On the faith of these assurances the respondent gave up possession of his room on the first floor. He is still carrying on his profession on the third floor. Can the appellants require him to leave?

It may well be the case that both parties, or at least the respondent, believed, at the time these assurances were given, and subsequently, that the new premises to be occupied by him would be subject to the Ordinance. In view of the finding, accepted by their Lordships, that the building became a new building, this has turned out not to be the case: and it is clear law that parties cannot by contract turn unprotected premises into premises which are legally subject to rent control legislation (see *Rogers v. Hyde* [1951] 2 K.B. 923). But there remains for consideration the assurance that, so long as the respondent continued to practise his profession, the appellants would not ask him to leave.

Apart from events occurring in 1961, with which their Lordships will deal in due course, it appears to their Lordships that the nature of this assurance and the circumstances in which it was given are such as to bring into play the doctrine of promissory estoppel as classically stated in two well known passages:

> "It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results—certain penalties or legal forfeiture—afterwards by their own act or with their own consent enter upon

> a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties". *Hughes v. Metropolitan Railway Co.* [1877] 2 A.C. 439, 448 *per* Lord Cairns L.C.
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> "It seems to me to amount to this, that if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a Court of Equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before.". *Birmingham and District Land Co. v. London and North Western Railway Co.* [1888] 40 Ch.D. 268, 286 *per* Bowen L.J.

Their Lordships do not overlook the point that the rights, which the appellants had against the respondent, and whose enforcement is in question, were not strictly pre-existing rights, but rights coming into existence upon the change in the respondent's situation induced by the appellants' assurances, but in their Lordships' opinion the same equitable principle applies. The fact that the respondent, as the result of the assurances given, entered upon a legal situation which was less favourable than that which he previously enjoyed, supports, rather than negatives, the equity of protecting him in the new position which he reached. It is of course quite clear that it was not possible for him to resume the position which he held prior to the assurances.

Their Lordships therefore consider that, during the initial period after the respondent had moved to the third floor, he enjoyed the benefit of an estoppel which would prevent the appellants from availing themselves of their legal right to remove him so long as he carried on his profession there.

It is contended however that the respondent lost this protection by reason of events occurring in 1961. On 12th January 1961 the appellants served him with a notice to quit. From an accompanying letter of the same date it was made clear that the purpose of the notice was to increase the rent payable by the respondent: a figure was stated of $517 per month which was claimed to be "very reasonable" having regard to the nature and condition of the premises.

On 4th March 1961, as appears from a letter of that date, the appellants indicated their willingness to grant a lease to the respondent for three years at the rental of $280 per month, the lessee to have an option to terminate the lease by three months' notice in writing. The respondent accepted these terms and a lease was drawn up and executed which, as already stated, contained a covenant to yield up at the determination of his tenancy. The question is, therefore, whether the estoppel, of which the respondent theretofore had the benefit, lapsed upon the execution of this lease.

The Court of Appeal, in their judgment, held that the appellants' contention, on this point, constituted a plea of waiver, and that, on the pleadings, this was a point not open to them. Their Lordships agree that waiver as such was not pleaded, but the appellants, in their reply, referred in terms to the lease of 1961, alleging that it represented the only agreement made between the parties. It remains necessary to deal with this contention.

In their Lordships' opinion the estoppel was unaffected by the events of 1961. It is quite clear, from the facts as stated, that the sole purpose for which the notice to quit of 12th January 1961 was served was to enable the rent to be raised. This was the only matter under discussion: the procedure that was used was in accordance with s. 7 of the Ordinance. The respondent in his evidence stated that he agreed to the increased rent because the landlord had spent money on the building. He further said that he willingly agreed to the lease because he felt that he could not contract out of the Control of Rent Ordinance. This no doubt reflects his belief that he was entitled to statutory protection, a belief which has turned out to be unfounded, but it is quite inconsistent with his having, or showing, any intention to give up such security as he enjoyed. As regards the covenant to yield up, their Lordships cannot regard a routine provision of this kind as sufficient to displace the vitally important right of the respondent to remain in possession while exercising his profession. It must have been in contemplation, as in fact happened, that the respondent would continue to hold over after the fixed period of three years; the estoppel, though perhaps unnecessary during the fixed term, remained as relevant to the legal relations of landlord and tenant, and as essential for the tenant as it had previously been. Their Lordships therefore cannot find that the benefit of the estoppel was removed by the events of 1961. It continued and continues in effect for the respondent's benefit.

Their Lordships will therefore dismiss this appeal: the appellants must pay the costs of the appeal.

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In the Privy Council

BANK NEGARA INDONESIA

v.

PHILIP HOALIM

DELIVERED BY
LORD WILBERFORCE

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