

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N

RAJA'S COMMERCIAL COLLEGE (sued as a firm)

Appellants
(Defendants)

- and -

GIAN SINGH & COMPANY LIMITED

Respondents
(Plaintiffs)

CASE FOR THE RESPONDENTS

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1. This is an Appeal from the Judgment and Order of the Court of Appeal of Singapore (Wee Chong Jin C.J., Kulasekarem, J. and Tan Ah Tah, J.) dated 12th November 1974, affirming the Judgment of Choor Singh J. dated 16th November 1973 under which the Appellants were ordered to give the Respondents possession of an area of 2,917 square feet of the second floor of the Gian Singh Building and to pay the Respondents damages in the sum of \$187,242.23.

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2. The main issue before the Court of Appeal, which it appears will be the substantial issue in this appeal, was whether the damages of \$187,242.23 should have been reduced under the principle enunciated in British Transport Commission v. Gourley [1956] A.C. 185. One of the questions arising is whether the damages are taxable under Section 10 of the Income Tax Act which is set out in full at the end of this case.

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3. The material facts are that the Respondents were at material times the owners of the building known as the Gian Singh Building at 30-31 Raffles Place, Singapore. The Appellants were monthly tenants of the Respondents from the year 1957 in respect of an area of 2,917 square feet on the second floor of the Gian Singh Building. The Respondents

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gave the Appellants a Notice to Quit dated the 30th November 1967 determining the Appellants' tenancy on 31st December 1967. The Appellants refused to comply with the Notice to Quit and remained in possession.

- pp. 1, 3. 4. By a Writ of Summons endorsed with a Statement of Claim of 17th January 1968 the Respondents claimed possession of the said area of 2,917 square feet occupied by the Appellants and double rent from 1st January 1968 to the date of delivery of possession, damages and costs. By a Defence of 24th February 1968 the Appellants claimed that the said area was governed by the Control of Rent Ordinance (Chapter 242, No.22 of 1953) and that the Notice to Quit was void. 10
- p.4
- p.22 5. The Action was tried before Choor Singh J. in the High Court of Singapore on 15th and 16th November 1973. On 16th November 1973 he gave formal judgment in favour of the Respondents under which it was adjudged that the Appellants should give the Respondents possession of the said area of 2,917 square feet and that the Appellants should pay the Respondents damages in the sum of \$187,242.23.
- p.22
- p.22 6. The Grounds for Judgment were given by Choor Singh J. on 25th June 1974. He said that there had been only one issue in the case namely whether the premises in question came within the provisions of the Control of Rent Ordinance. He held that on the evidence before him the extensive structural alterations to the building in 1953 had converted it into a new building which was not therefore subject to the provisions of the Control of Rent Ordinance. In reaching his conclusion on the evidence he found as a fact that the alterations and additions described by Mr. Balwant Singh, a witness for the Respondents, had been carried out by the Respondents in 1953 and he rejected conflicting evidence given by the witness for the Appellants on the ground that it was untruthful. As the premises were not subject to the Control of Rent Ordinance he held that the Respondents had been entitled to possession of the said area of 2,917 square feet on the termination of the tenancy on 31st December 1967. The Appellants by remaining in possession of the premises after the termination of their tenancy became trespassers and were liable to pay mesne profits. 20
- p.26
- p.26 7. Choor Singh J. said that mesne profits were damages and the measure of damages in the present case was the rent at which the Respondents would have been able to let the premises had the Appellants complied with the Notice to Quit. The Appellants had been in occupation of the area of 2,917 square feet at a monthly rental of \$2,281.50 inclusive of all services including P.U.B. charges. That worked out at about 75 cents per square foot. Mr. Balwant Singh had given 30
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p.30 appeal by the Appellants against both the order for possession
and the damages were set out in the Petition of Appeal of 22nd
July 1974. It appears from the judgment of the Court of
p.35 appeal that the Respondents abandoned the appeal against the
order for possession when the appeal came up for hearing.

p.35 9. The appeal came on for hearing before the Court of Appeal
(Wee Chong Jin C.J., Kulasekaram J. and Tan Ah Tah, J.) on
15th and 16th October 1974 and judgment of the Court was
given on 12th November 1974 dismissing the appeal with costs. 10
p.36 In the course of its judgment the Court considered and
rejected three contentions made by the Appellants. The first
contention was that in awarding damages and accepting the
Respondents computation of damages Choor Singh J. had failed
to take into account the peculiar circumstances relating to
the leases to the Oriental Emporium and the Bank of America
in that they were already lessees of the ground floor of the
same premises and a nearby building respectively so that
leases on the first and fourth floors would have been valuable
adjuncts to their businesses. The Court rejected that
contention on the basis that it had not been advanced at the 20
trial nor was there any evidence that the rent paid by the
Oriental Emporium and the Bank of America was because either
p.37 had obtained a valuable adjunct to its business. The next
contention of the Appellants was that Choor Singh J. accepted
the computation of damages prepared by the Respondents without
scrutinising the contents of the lease to Oriental Emporium
and the Bank of America and that had he done so he would have
come to the conclusion that the Respondents' calculation was
mathematically incorrect. In the opinion of the Court of
Appeal Choor Singh J. had not erred in accepting the figures 30
prepared by the Respondents. In any event he had been
entitled to act on the Respondents' evidence as that had been
the best evidence available, the Appellants neither
challenging it nor adducing any contrary evidence.

p.37 10. The Court of Appeal said that the main contention of the
Appellants was that Choor Singh J. had erred in law in
not reducing the damages on the ground that the amount of the
loss for which the damages represented compensation would
have been diminished in the Respondents' case by the incidence
of income tax. The Appellants had relied on the principle 40
enunciated in British Transport Commission v. Gourley
[1956] A.C. 185 and also on Hall & Co. Ltd. v. Pearlberg [1956]
1 W.L.R. 244 in which the official referee applied Gourley's
case in assessing damages for trespass to land. In both
those cases the Court had proceeded on the basis that the
damage would not be taxable in the hands of the recipients
and on that basis held that in assessing such damages there
should be taken into account the tax that the plaintiffs would
have had to pay in respect of the lost earnings and rent

10 respectively. This point had not been taken by the Appellants in the Court below and consequently no evidence had been led on the Respondents' liability to tax. In the circumstances if the Court had been of the opinion that the damages awarded by the court below would not have been taxable in the hands of the Respondents they would have allowed the appeal by remitting the matter to the trial court to assess damages on the basis that account ought to be taken of the income tax the Respondents would have paid if in fact it had been received as rent. The Court would not have altered the order as to costs and would have ordered that the Respondents had the costs of the appeal. In the judgment of the Court the main contention of the Appellants failed however. In Gourley's case the decision proceeded on the assumption that the damages awarded would not be taxable in the Plaintiff's hands and in Hall & Co. Ltd. v. Pearlberg the official referee expressly held that the £650 awarded as damages in lieu of rent was not liable to tax under the English Income Tax Act 1952. The Appellants had relied on Hall & Co. Ltd. v. Pearlberg as direct authority that damages awarded in lieu of rent would not be liable to income tax. In the opinion of the Court that reliance was unsound because the Singapore income tax law was different from the English income tax laws. The question was whether the damages awarded to the Respondents as mesne profits would be liable to income tax. The amount of these damages was the rent at which the Respondents would have been able to let the premises had the Appellants complied with the Notice to Quit. In the opinion of the Court the damages awarded undoubtedly fell within the charge to Income Tax in Section 10 (1)(f) of the Income Tax Act (Ch.141) as "any other profits arising from property".. The Court accordingly dismissed the appeal with costs. The appeal was dismissed with costs by formal Order of the Court of Appeal of 19th November 1974.

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11. By an Order of 17th February 1975 the Court of Appeal granted the Appellants leave to appeal to the Judicial Committee of the Privy Council.

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40 12. The Respondents respectfully submit that the Court of Appeal is correct in respect of all the contentions made by the Appellants and should be upheld. In relation to the main contention before the Court of Appeal the Respondents will submit that it is an essential condition for the application of the principle in British Transport Commission v. Gourley that the damages will not be taxable in the hands of the plaintiff and that in the present case the damages will be taxable under Section 10 of the Singapore Income Tax Act. It will be submitted in this connection that Hall & Co. Ltd. v. Pearlberg was decided by the official referee

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on the basis of his understanding of the charge in Section 175 of the Income Tax Act 1952 which is a very different provision to Section 10 of the Singapore Income Tax Act. Reference will also be made to the analysis of the Court of Appeal in London and Thames Haven Oil Wharves Ltd. v. Attwooll [1967] Ch. 792 which it will be submitted support the conclusion that the damages in the present case will be taxable under Section 10 of the Income Tax Act.

13. The Respondents respectfully submit that the appeal should be dismissed and that the Judgment and Order of the Court of Appeal should be confirmed and that the Appellants be ordered to pay to the Respondents their costs of this Appeal for the following (among other)

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R E A S O N S

- (1) BECAUSE of the reasons given by the Court of Appeal
- (2) BECAUSE the principle in British Transport Commission v. Gourley does not apply to reduce the damages awarded if the damages are subject to tax.
- (3) BECAUSE the damages in the present case are subject to tax under Section 10 of the Income Tax Act.
- (4) BECAUSE the Judgments of Choor Singh J. and the Court of Appeal were correct.

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J. HOLROYD PEARCE

P A R T III
IMPOSITION OF INCOME TAX

10. (1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of-

(a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

10 (b) gains or profits from any employment;

* * *

(d) dividends, interest, or discounts;

(e) any pension, charge or annuity;

(f) rents, royalties, premiums and any other profits arising from property;

(g) any gains or profits of an income nature not falling within any of the preceding paragraphs.

(1A) For the purposes of paragraph (f) of subsection (1) of this section -

20 (a) the expression "any other profits arising from property" shall be deemed to include the net annual value of property used by or on behalf of the owner for residential purposes and not for the purposes of gain or profit; and

(b) the expression "net annual value" in relation to any property means the annual value of such property less the expenses of repair, insurance, interest, maintenance or upkeep and all public rates and taxes paid thereon:

Provided that in respect of any one property which is occupied for residential purposes by the owner thereof -

30 (i) the net annual value of such property; or

(ii) an amount equal to such sum as the Minister may, by order published in the Gazette, specify,

whichever is the less, shall not be deemed to be profits arising from property.

(2) For the purposes of paragraph (b) of subsection (1) of this section, "gains or profits from any employment" means -

(a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (other than a subsistence, travelling, conveyance or entertainment allowance which is proved to the satisfaction of the Comptroller to have been expended for purposes other than those in respect of which no deduction is allowed under section 15 of this Act) paid or granted in respect of the employment whether in money or otherwise;

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(b) the value of any food, clothing or lodging provided or paid for by the employer;

(c) the annual value of any place of residence provided by the employer, or where any place of residence is provided by the employer at a rent less than the annual value, the excess of the annual value over such rent. For the purposes of this paragraph -

(i) if the annual value is in excess of ten per cent of the gains or profits from the employment mentioned in paragraphs (a) and (b) of this subsection, such excess shall be disregarded;

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(ii) "place of residence" means, where premises are shared, the portion thereof occupied by the person chargeable.

(3) Any sum realised under any insurance against loss of profits shall be taken into account in the ascertainment of any profits or income.

(4) Where, under the provisions of section 17, 20 or 21 of this Act, a balancing charge falls to be made, the amount thereof shall be deemed to be income chargeable with tax under this Act.

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(Plaintiffs)

CASE FOR THE RESPONDENTS

COWARD CHANCE,
Royex House,
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London E.C.2.
Solicitors for the Respondents