

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(Appellate Jurisdiction)

B E T W E E N :

STATION HOTELS BERHAD

Appellants
(Defendants)

- and -

MALAYAN RAILWAY ADMINISTRATION

Respondents
(Plaintiffs)

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

Turner Peacock,
1 Raymond Buildings,
Gray's Inn,
London WC1R 5BJ.

Solicitors for the
Appellants

Stephenson Harwood,
Saddlers' Hall,
Gutter Lane,
London, EC2V 6BS.

Solicitors for the
Respondents

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

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DUPLICATES OF DOCUMENTS TRANSMITTED TO PRIVY COUNCIL,
ONE COPY OF WHICH IS ALREADY INCLUDED IN THE
RECORD AND THEREFORE NOT REPRODUCED

1. Traffic Agreement No.20/68 dated 28th December 1968 and attached plan
2. First Addendum to Traffic Agreement No.20/68 dated 25th September 1969
3. Exhibit TS.2 Second Addendum to Traffic Agreement No.20/68 dated 5th December 1973
4. Exhibit Z.4 Letter dated 10th May 1974
5. Exhibit Z.5 Letter dated 11th July 1974

No. 1

WRIT OF SUMMONS

In the High
Court of Malaya

No. 1
Writ of Summons
18th April 1975.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

B E T W E E N :

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant

SPECIALLY INDORSED WRIT

10 The Honourable Tan Sri Sarwan Singh Gill,
P.S.M., Chief Justice of the High Court, Malaya,
in the name and on behalf of His Majesty the Yang
Di-Pertuan Agong.

To:- Station Hotels Berhad,
No. 63, Jalan Klyne,
Kuala Lumpur.

20 WE COMMAND YOU, that within eight (8) 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 an action at the suit of
Malayan Railway Administration of Kuala Lumpur.

AND TAKE NOTICE that in default of your so
doing the Plaintiff may proceed therein and
judgment may be given in your absence.

WITNESS, WAN ABDUL AZIZ, Senior Assistant
Registrar of the High Court, Malaya.

Dated this 18th day of April, 1975.

Sd: Skrine & Co. Sd: Wan Abdul Aziz,
Plaintiff's Solicitors. Senior Assistant Registrar,

30 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 last renewal including the
date of such date and not afterwards.

In the High
Court of Malaya
No. 1
Writ of Summons
18th April 1975
(cont'd)

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

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Kuala Lumpur.

If a Defendant enters an appearance he must also deliver a defence within fourteen 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 him without notice, unless he has in the meantime been served with a Summons for Judgment. 10

STATEMENT OF CLAIM

1. The Plaintiff is a corporate body established under the Railway Ordinance 1948, and is the registered owner of the premises constituting "Station Hotel Kuala Lumpur" and held under Railway Reserve Lot No. 13 in the district of Kuala Lumpur (hereinafter referred to as the said premises). 20

2. By an agreement dated 28th December 1968 entered into between the Plaintiff and the Defendant, the Plaintiff leased the said premises to the Defendant for a period of five years from 1st January 1968 under the terms contained therein (hereinafter referred to as the principal agreement). 30

3. Clause 6(i) of the principal agreement provided that in the absence of any previous mutual agreement between the Plaintiff and Defendant to enter the lease, the principal agreement will expire automatically on the expiry of (5) years.

4. On the 5th of December 1973, both the Plaintiff and Defendant entered into another agreement (hereinafter referred to as the 1st supplementary agreement) by which the Plaintiff agreed to extend the lease of the said premises for a further period of one year from 1st January 1973 upon the terms and conditions of the principal agreement. 40

5. On the 16th of March 1974 the Plaintiff and Defendant entered into another agreement (hereinafter referred to as the second supplementary agreement) by which the lease of the said premises in favour of the Defendant was extended to a further period expiring on the 30th of June 1974 upon the terms and conditions of the principal agreement and addenda but subject to payment of rental of \$2,000/- per month only.

In the High
Court of Malaya

No. 1
Writ of Summons
18th April 1975
(cont'd)

10 6. On the 10th of May 1974, the Plaintiff wrote to the Defendant informing them of the Plaintiff's intention not to extend the lease of the said premises any further.

7. On the 10th July, 1974, the Plaintiff's Solicitors wrote to the Defendant giving them seven days to quit and deliver up vacant possession of the said premises, but the Defendant has failed or neglected to do so.

20 8. From July 1974 until September 1975, the Defendant forwarded to the Plaintiff's Solicitors a sum of \$2,000/- per month as monthly rentals, which sums were accepted by the Plaintiff's Solicitors, "without prejudice" to the rights of the Plaintiff to proceed against the Defendant to obtain vacant possession of the premises and to recover double rent for the period the Defendant will be illegally occupying the said premises.

30 9. The Plaintiff commenced eviction proceedings against the Defendant in K.L. Civil Suit No. 870/74 on the 22nd day of July, 1974. The Defendant filed a Statement of Defence on 23rd day of August, 1974 an amended Statement of Defence on 6th day of February 1975 and by paragraph 10(iii) of which the Defendant alleged that acceptance of the sum tendered as monthly rentals after termination of the lease on 30th June, 1974, by the Plaintiff amounted to creation of a monthly tenancy which tenancy had not been properly terminated by the Plaintiff.

40 10. On the 27th day of February, 1975, the Plaintiff through its Solicitors Messrs. Skrine & Co. wrote to the Defendant, giving the Defendant due notice to quit and deliver up possession of the said premises on or before 21st March, 1975 or at the end of the next complete month of your tenancy which will expire next after the end of one month from the service upon the Defendant of the said

In the High Court of Malaya

No. 1
Writ of Summons
18th April 1975
(cont'd)

letter. The Defendant has failed to vacate the said premises and is in illegal occupation thereof.

11. The Plaintiff's claim against the Defendant is for:-

- (i) An order that the Defendant and all persons holding through it or under it do forthwith quit and deliver up vacant possession of the said premises;
- (ii) An injunction restraining the Defendant and all persons holding through it or under it from entering, remaining and occupying the said premises; 10
- (iii) Double rent in accordance with Section 28 Subsection 4(a) of the Civil Law Act 1956 at the rate of \$4,000/- per month from 1st April, 1975 till the date of which the said premises is vacated;
- (iv) Costs of this suit;
- (v) Further or other relief.

Dated this 18th day of April, 1975. 20

Sd: Skrine & Co.
Plaintiff's Solicitors.

And the sum of \$60/- (or such sum as may be allowed on taxation) for costs and also in case the Plaintiff obtains an Order for substituted service, the further sum of \$300/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or its advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed. 30

Provided that if it appears from the Indorsement of the Writ that the Plaintiff is resident outside the Schedule territories as defined in the Exchange Control Ordinance, 1953, or is acting by order on behalf of a person so resident, or if the Defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff, its advocate and solicitor or agent. 40

This Writ was issued by Messrs. Skrine & Co., whose address for service is Straits Trading Building, No. 4, Leboh Paser Besar, Kuala Lumpur, Solicitors for the said Plaintiff of Kuala Lumpur.

In the High
Court of Malaya
No. 1
Writ of Summons
18th April 1975
(cont'd)

This Writ was served by me at
on the Defendant on
the day of , 1975 at the hour of

Indorsed the day of , 1975.

Signed:-

Address:-

10

No. 2

DEFENCE AND COUNTERCLAIM

No. 2
Defence and
Counterclaim
12th May 1975

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

B E T W E E N :

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant

DEFENCE AND COUNTERCLAIM

20

STATEMENT OF DEFENCE

1. The Defendant admits to paragraph 1 of the Statement of Claim.

2. The Defendant admits entering into an agreement dated the 28th December, 1968 called Traffic Agreement No. 20/68 with the Plaintiff and admits entering into three Addenda thereto dated the 25th September, 1969, 5th December, 1973 and 16th March, 1974 respectively (hereinafter collectively referred to as "the Said Traffic Agreements").

30

3. The Defendant avers that the Said Traffic Agreements, inter alia, grants to the Defendant the right privilege permit or licence:-

- (i) to use all those rooms inside and outside stairs and the lift on the ground first and mezzanine floors of the Railway Station Buildings at Kuala Lumpur (hereinafter referred to as "the said Premises") for the purposes of the operation management and business of a commercial hotel; 10
- (ii) to manage and operate a restaurant in the Said Premises for the supply and sale of food and refreshments;
- (iii) to manage and operate a bar or the sale of liquor in the Said Premises;
- (iv) to use the Plaintiff's crest or corporate image on all linen, crockery, glass, cutlery and other equipments used for the management operation and business of the said commercial hotel; 20

Provided always that the Defendant was to make charges for board residence meals liquor and refreshments at rates not exceeding those as approved from time to time by the Plaintiff's General Manager. The Defendant shall refer to the said Traffic Agreements at the trial of this suit for their full terms and effects thereof.

4. The Defendant avers that the Said Traffic Agreements, inter alia, grants to the Defendant not only the right to occupy the Said Premises but also the right privilege permit or licence to operate carry on or use the Said Premises for the management operation and business of a hotel cum restaurant and bar. 30

5. The Defendant has managed and operated the said hotel business on the Said Premises since 1935. Thereafter the right privilege permit or licence granted by the Plaintiff to the Defendant to manage and operate the said hotel business on the Said Premises has been in the ordinary course of events renewed not less than twenty (20) times (hereinafter referred to as the "Said Renewals"). The Defendant shall refer to the Said Renewals at the trial of this suit for their full terms and effects thereof. 40

6. The revocation and/or refusal to renew the Defendant's permit or licence to operate carry on or use the Said Premises for the management operation and business of the said commercial hotel by the Plaintiff without first giving to the Defendant a Right of Hearing is in breach of the Rules of Natural Justice and is therefore null and void.

In the High
Court of Malaya

No. 2
Defence and
Counterclaim
12th May 1975
(cont'd)

10

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7. Further or alternatively, the renewal of the Said Traffic Agreements granting the Defendant the right privilege permit or licence to occupy the Said Premises for the management and operation of the said hotel business might reasonably have been expected in the ordinary course of events by virtue, inter alia, of the Said Renewals. The purported refusal by the Plaintiff to renew the Said Traffic Agreement granting the Defendant the above said right privilege permit or licence, by the service of Notices dated the 10th day 1974 and the 10th July 1974 respectively, is contrary to and constitutes a breach of the provisions of Article 153(7) of the Constitution of Malaysia and is therefore null and void and of no effect.

30

40

8. Further or alternatively, the Plaintiff is refusing to renew the Said Traffic Agreements granting the abovesaid right privilege permit or licence, so that the Said Premises shall be given over to the Perbadanan Pembangunan Bandar, a statutory body incorporated by the Perbadanan Pembangunan Bandar Act 1971 or to third person(s) which is contrary to and constitutes a breach of Article 153(7) of the Constitution of Malaysia and is therefore null and void and of no effect. The Defendant shall refer to Article 153(7) of the Constitution of Malaysia at the trial of this suit for its full terms and effects thereof. The Plaintiff wrote to the Defendant on the 10th May 1974 stating, inter alia, that the management operation and business of the said hotel on the Said Premises was to be given to Perbadanan Pembangunan Bandar and/or to third person(s). The Defendant shall refer to the Plaintiff's said letter of the 10th May, 1974 for its full terms and effects thereof.

9. Further or alternatively, the Defendant will rely on the provisions of the Article 13 of the Constitution of Malaysia and shall refer to the Article 13 at the trial of this suit for its full terms and effects thereof.

10. Further or alternatively, if and in so far as the Said Traffic Agreements or part thereof constitutes wholly or partly on agreement for a lease or is a tenancy of the Said Premises, the Defendant further avers:-

- (i) that the Said Premises are rent controlled premises and the Defendant claims the shelter and protection of the Control of Rent Act 1966;
- (ii) further or alternatively, that the acceptance by the Plaintiff of the monthly rental for the months of July and August 1974, constitutes the Defendant a monthly tenant of the Said Premises under the Rent Control Act 1966 and the Plaintiff is therefore not entitled to repossession of the Said Premises as alleged or at all and the Defendant claims the shelter and protection of the Control of Rent Act 1966; 10
- (iii) further or alternatively, only in so far as the Plaintiff's Statement of Claim alleges or avers that the Defendant is a monthly tenant of the Said Premises, the Defendant admits to the same and further avers that the Defendant is a monthly tenant of rent controlled premises and the Defendant claims the shelter and protection of the Control of Rent Act 1966. 20

11. Further or alternatively, the Defendant says that the standard rent of the Said Premises on the 25th September 1940 per annum was M\$33,930-00 and that the fair rent of the Said Premises immediately after the coming into force of the Control of Rent Act 1966 was M\$42,572-00 per annum. 30

12. The Defendant has paid to the Plaintiff the following total annual rental:-

- (a) from the 1st January 1968 to 31st December, 1970, the sum of \$66,000 per annum;
- (b) from the 1st January, 1971 to 31st December, 1971, the sum of \$52,500 per annum; 40
- (c) from the 1st January 1972 to 31st December, 1973, the sum of \$48,000 per annum.

13. The Defendant has therefore paid to the

Plaintiff from the 1st January, 1968 to the 31st December, 1973 annual rental in excess of the maximum recoverable annual rental amounting to M\$91,068/- made up as follows:-

In the High
Court of Malaya

No. 2
Defence and
Counterclaim
12th May 1975
(cont'd)

- (a) 1968 the excess of \$23,428/-;
- (b) 1969 the excess of \$23,428/-;
- (c) 1970 the excess of \$23,428/-;
- (d) 1971 the excess of \$ 9,928/-;
- (e) 1972 the excess of \$ 5,428/-;
- 10 (f) 1973 the excess of \$ 3,428/- .

14. Save as it is hereinbefore expressly admitted, the Defendant denies each and every allegation of fact or law in the Statement of Claim appearing as if each were set out herein and specifically traversed in seriatim.

AND THE DEFENDANT PRAYS THAT THE PLAINTIFF'S CLAIM BE DISMISSED WITH COSTS.

15. The Defendant repeats paragraphs 1, and 10 to 14 hereof.

- 20 16. The Defendant counter-claims the said sum of M\$91,068/- being overpayment of rent recoverable by virtue of the provisions of the Control of Rent Act 1966.

AND THE DEFENDANT COUNTER-CLAIMS:-

- (a) general damages;
- (b) special damage amounting to M\$91,068/-;
- (c) interest on general and special damages at the rate of 6% per annum from the date hereof to the date of realisation;
- 30 (d) costs of this counter-claim
- (e) such further or other relief as this Honourable Court shall deem just and equitable in the circumstances.

Dated this 12th day of May 1975.

Sd: Allen & Gledhill.
SOLICITORS FOR THE DEFENDANT

In the High
Court of Malaya
No. 2
Defence and
Counterclaim
12th May 1975
(cont'd)

This Defence and Counterclaim is filed by
Messrs. Allen & Gledhill, Solicitors for the
Defendant abovenamed whose address for service is at
Bangunan U.M.B.C. (24th Floor), Jalan Sulaiman,
Kuala Lumpur.

No. 3
Reply and
Defence to
Counterclaim
16th May 1975

No. 3
REPLY AND DEFENCE TO COUNTERCLAIM

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

B E T W E E N :

10

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant

REPLY AND DEFENCE TO COUNTERCLAIM

1. Save in so far as hereinafter expressly
admitted or denied the Plaintiff joints issue with
the Defendant in its Statement of Defence.

2. The Plaintiff denies that the principal
agreement or any of the Traffic agreements referred
to in paragraphs 2 and 3 of the Statement of Defence
grants or purports to grant to the Defendant any
"permit privilege or licence" of the nature referred
to in paragraphs 3, 4 and 6 of the Statement of
Defence or any at all. 20

3. It is denied that Rules of Natural Justice
and/or Article 153(7) and 13 of the Federal
Constitution of Malaysia referred to in paragraphs
6, 7, 8 and 9 of the Statement of Defence and
Counterclaim has any application to the dispute
herein. The Plaintiff further states that the
rights and liabilities binding on both the
Plaintiff and the Defendant are contractual and are
contained in the principal agreement and the various
addenda thereto. 30

4. Save and except that the premises in question was leased to the Defendant with the condition that the said premises shall only be used for the purpose of operating a Hotel and Restaurant subject to certain stipulations therein, the rest of paragraphs 3 and 4 of the Statement of Defence and Counterclaim are denied.

In the High
Court of Malaya
No. 3
Reply and
Defence to
Counterclaim
16th May 1975
(cont'd)

10

5. Save and except that the Defendant had been Lessee of the premises, under the various Traffic agreement, from 1935, the rest of paragraph 5 of the Statement of Defence is denied.

6. It is denied that the Plaintiff did or had the right to grant, revoke or refuse to renew, any "permit, or licence" of the nature described by the Defendant in paragraph 6 of its Statement of Defence and Counterclaim.

20

7. Contents of paragraph 8 of the Statement of Defence and Counterclaim are denied. The Plaintiff further states that the premises in question is not a rent controlled premises within the Rent Control Act and as such, the Defendant is not entitled to claim protection under the Rent Control Act.

WHEREFORE the Plaintiff prays that the Defendant's Counterclaim be dismissed with costs.

Dated this 16th day of May, 1975.

Sd: Skrine & Co.
Plaintiff's Solicitors.

30

This Reply and Defence to Counterclaim is filed by Messrs. Skrine & Co., Straits Trading Building, No. 4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Plaintiff abovenamed.

No. 4

SUMMONS FOR ORDER 14 JUDGMENT

No. 4
Summons for O.14
Judgment
22nd September
1975.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

In the High
Court of Malaya

B E T W E E N :

No. 4 Malayan Railway Administration Plaintiff
Summons for - and -
0.14 Judgment Station Hotels Berhad Defendant
22nd September
1975.
(cont'd)

SUMMONS IN CHAMBERS

LET ALL PARTIES Concerned attend the Judge in Chambers at the High Court, Kuala Lumpur, on Friday, the 13th day of February, 1976 at 9.30 o'clock in the forenoon, on the hearing of an application on the part of the Plaintiff above-named for an Order that the Plaintiff be at liberty to enter final judgment against the Defendant for:-

10

- (a) An Order that the Defendant and all persons holding through it 'or' under it do forthwith quit and deliver up and vacate and hand over possession of the premises known as 'Station Hotel, Kuala Lumpur' under Railway Reserve Lot No. 13 to the Plaintiff;
- (b) An injunction restraining the Defendant and all persons holding through it or under it from remaining on or continuing to remain on the said premises;
- (c) An Order that the Defendant do pay a sum of \$4,000/- per month being double rent from 1st March 1975 till vacant possession is given to the Plaintiff;
- (d) An Order that costs of suit be assessed at \$300/-.

20

Dated this 22nd day of September, 1975.

30

Sd: Illegible
Senior Assistant Registrar,
High Court, Kuala Lumpur.

This Summons in Chambers was taken out by Messrs. Skrine & Co., Straits Trading Building, No. 4, Leboh Pasar Besar Besar, Kuala Lumpur, Solicitors for the Plaintiff abovenamed.

The Affidavit of Zainudin bin Awang Ngah

affirmed on the 22nd day of September, 1975 and filed herein will be read in support of this application.

In the High
Court of Malaya

No. 4
Summons for
O.14 Judgment
22nd September
1975.
(cont'd)

This Summons in Chambers will be served on:-

Messrs. Allen & Gledhill,
Bangunan U.M.B.C. (24th Floor),
Jalan Sulaiman,
Kuala Lumpur, Solicitors
for the Defendant abovenamed.

No. 5

AFFIDAVIT OF ZAINUDIN BIN AWANG NGAH
(RESPONDENTS)

No. 5
Affidavit of
Zainudin Bin
Awang Ngah
sworn 22nd
September 1975
(Respondents)

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

B E T W E E N :

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant

A F F I D A V I T

I, ZAINUDIN BIN AWANG NGAH, of full age, and residing at No. 12, Jalan Syers, Kuala Lumpur, affirm and say as follows:-

1. I am the Secretary and Cheif Administrative Officer of the Plaintiff abovenamed and am duly authorised to make this Affidavit on its behalf.

2. On 28th December 1968, the Plaintiff and the Defendant entered into an agreement by which the premises in question was leased to the Defendant for a period of five years from 1st January 1968 (hereinafter referred to as the principal agreement). Annexed hereto and marked "Z.1" is a copy of the said agreement.

3. On 5th December 1973 both the Plaintiff and the Defendant entered into a supplementary agreement by which the Plaintiff agreed to extend the lease granted under the principal agreement for a further period of one year from 1st January 1973 (hereinafter referred to as the first supplementary agreement). Annexed hereto and marked "Z.2" is a copy of the said agreement.

4. On 16th March 1974, both Plaintiff and Defendant entered into another supplementary agreement by which the lease granted under the principal agreement was extended for a further period of 6 months expiring on 30th June 1974, subject to payment of rental of \$2,000/- per month (hereinafter referred to as second supplementary agreement). Annexed hereto and marked "Z.3" is a copy of the said agreement.

10

5. On 10th May 1974, the Plaintiff wrote to the Defendant informing the Defendant that the lease to the premises in question will not be further extended. Annexed hereto and marked "Z.4" is a copy of the said letter.

20

6. On 11th July 1974, the Plaintiff's solicitors wrote to the Defendant giving the Defendant seven days to quit and deliver up vacant possession, but the Defendant has failed to do so. Annexed hereto and marked "Z.5" is a copy of the said letter.

7. The Plaintiff commenced eviction proceedings against the Defendant in K.L. Civil Suit No. 870/74 on the 22nd day of July, 1974. The Defendant filed a Statement of Defence on 23rd August, 1974 and an amended Statement of Defence on 6th day of February, 1975 and by paragraph 10 (iii) of which the Defendant alleged that acceptance of the sum tendered as monthly rentals after termination of the lease on 30th June 1974, by the Plaintiff amounted to creation of a monthly tenancy which tenancy had not been properly terminated by the Plaintiff.

30

8. On the 27th February 1975, the Plaintiff through its Solicitors, Messrs. Skrine & Co. wrote to the Defendant giving due notice to quit and deliver up possession of the said premises by 31st March, 1975. The Defendant has however failed to do so and is still in illegal occupation of the said premises.

40

9. It is within my knowledge that the abovenamed

Plaintiff is justly and truly entitled to possession of the premises in question and that the Defendant is justly and truly indebted to the Plaintiff at the rate of \$4,000/- per month being double rent which the Plaintiff is entitled to as a result of illegal occupation of the said premises by the Defendant.

In the High
Court of Malaya

No. 5
Affidavit of
Zainudin Bin
Awang Ngah
Sworn 22nd
September 1975
(Respondents)
(cont'd)

10

10. I am advised by the Plaintiff's solicitors and which advice I verily believe that the Plaintiff has a good cause of action against the Defendant and that the Defendant has no defence to this action and had caused an appearance to be entered merely to cause delay.

11. I therefore pray for an order in terms of the Summons-in-Chambers.

AFFIRMED at Kuala Lumpur,)
this 22nd day of September) sd. Zainudin Bin
1975 at 9.15 a.m.) Awang Ngah

20

Sd: M. Gavindasemy
Commissioner for Oaths.

This Affidavit is filed by Messrs. Skrine & Co., Straits Trading Building, No. 4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Plaintiff abovenamed.

No. 6

AFFIDAVIT OF CHUE JONG KEOW
(APPELLANTS)

No. 6
Affidavit of
Chue Jong Keow
sworn 30th
January 1976
(Appellants)

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

30

B E T W E E N :

Malayan Railway Administration

Plaintiff

- and -

Station Hotels Berhad

Defendant

No. 6
Affidavit of
Chue Jong Keow
sworn 30th
January 1976
(Appellants)
(cont'd)

I, CHUE JONG KEOW, of No. 26, Road 1/4,
Petaling Jaya, affirm and state as follows:-

1. I am the Manager of the Defendant company and am duly authorised by the Defendant company to make this Affidavit in Reply on its behalf. I crave leave to refer to the Affidavit of T. Selvaratnam, the Secretary and Chief Administrative Officer of the Plaintiff, affirmed on the 21st April, 1975 at Kuala Lumpur and filed herein. 10

2. I am advised by my Solicitors that the Plaintiff is asking the Court for an Order that the Plaintiff be at liberty to enter final judgment against the Defendant under Order 14 of the Rules of the Supreme Court 1957 in the terms of the Plaintiff's Summons in Chambers dated the 21st April, 1975.

3. I am advised and believe that the Plaintiff is not entitled to the relief claimed in the terms of the Plaintiff's Summons in Chambers dated the 21st April, 1975 or to any other relief under Order 14 of the Rules of the Supreme Court for the reason that there are triable issues of both fact and law in respect of the Plaintiff's claim. 20

4. The Defendant makes two (2) preliminary objections on the strength of which the Defendant says that the Plaintiff's application for Summary Judgment be dismissed with costs, these preliminary objections being:-

- (a) The Defendant's Solicitors advise me that the Plaintiff has committed a fundamental error of procedure by being in breach of Order 14 Rule 1 of the Rules of Supreme Court 1975. The Plaintiff applied for and served the Plaintiff's application for Summary Judgment even before the Defendant has caused an appearance to be entered. The Plaintiff's application for summary Judgment under Order 14 Rule 1 of the Rules of Supreme Court 1957 is therefore premature as Order 14 Rule 1 itself states the pre-condition of the Plaintiff being allowed to apply for Summary Judgment, namely, that the Defendant has entered an appearance to the Plaintiff's Specially Indorsed Writ of Summons. 30 40

10 (b) T. Selveratnam, the Secretary and Chief Administrative Officer of the Plaintiff has failed in his Affidavit sworn on the 21st of April, 1975 to give his true place of abode. This, the Defendant's Solicitors advised me, is in breach of Order 38 Rule 8 of the Rules of Supreme Court 1957. The Affidavit under reference merely gives the deponent's address as care of P.O. Box No. 1, Kuala Lumpur.

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5. I crave leave to refer to the Defendant's Statement of Defence and Counterclaim dated the 12th day of May, 1975 and filed in respect of this suit. It is apparent from the Statement of Defence and Counterclaim that there are the following triable issues of both fact and law:-

20 (a) Whether or not the Traffic Agreement No. 20/68 dated the 28th December 1968 and the three Addenda thereto dated the 25th September, 1969, 5th December, 1973 and 16th March, 1974 respectively grant to the Defendant not only the right to occupy the premises in question and also the right, privilege, permit or licence to operate carry on or use the premises in question for the management operation and business of a hotel cum restaurant and bar especially in view of the fact that the Defendant has managed and operated the said hotel business in the premises in question since 1935 and that in the ordinary course of events the Plaintiff has renewed such licence not less than twenty (20) times since 1935. There is a question of fact and law as to whether or not the aforesaid repeated renewals create in favour of the Defendant a right, privilege, permit or licence independent of or in addition to the mere tenancy as alleged by the Plaintiff. This question goes to the merits of the case.

40 (b) Further or alternatively, as to whether or not the revocation and/or refusal to renew the Defendant's permit or licence to operate carry on or use the premises in question for the management, operation and business known as Station Hotel Kuala Lumpur by the Plaintiff without first giving to the Defendant a Right of Hearing is in breach of the Rules of Natural Justice and that therefore such revocation and/or refusal to

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renew the Defendant's permit or licence is null and void. There is a question of fact and law that the Plaintiff's conduct is in breach of the Rules of Natural Justice. This question goes to the merits of the case.

- (c) Further or alternatively, there is a fundamental question of fact and constitutional law as to whether or not the purported refusal by the Plaintiff to renew the said Traffic Agreement thereby denying the Defendant the right, privilege, permit or licence to manage and operate the business of the hotel cum restaurant and bar especially in view of the same being renewed over twenty (20) times since 1935 in the ordinary course of events, is contrary to and constitutes a breach of the provision of Article 153(7) of the Constitution of Malaysia and is therefore null and void. This is a fundamental question to be tried. This a question that goes to the merits of the case. 10 20
- (d) Further or alternatively, as to whether or not the actions of the Defendant contravene Article 13 of the Constitution of Malaysia. This a fundamental question of law and goes to the merits of the case.
- (e) Further or alternatively, as to whether or not the premises in question are rent controlled premises and fall within the ambit of the Control of Rent Act 1966. This is a question of fact and law which goes to the merits of the case. 30
- (f) Further or alternatively, as to whether or not the Plaintiff's acceptance of monthly rentals for the months of July and August constitutes the Defendant as a monthly tenant of the premises in question under the Control of Rent Act 1966 and that therefore the Defendant is entitled to the protection of the Control of Rent Act 1966. This is a question of fact and law which goes to the merits of the case. 40
- (g) Further or alternatively, as to whether or not the Defendant, if the premises in question or adjudicated to be rent controlled premises under the Control of Rent Act 1966, is entitled to the Counterclaim amounting to

₹91,068/- being annual rental paid in excess of the maximum recoverable annual rental by the Plaintiff.

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10 6.(a) the Plaintiff in its pleadings does not deny that the Defendant is a monthly tenant of the premises in question nor does the Plaintiff deny that the Defendant is a monthly tenant under the Control of Rent Act 1966, but the Plaintiff avers that the Plaintiff is exempted from the operation of the Control of Rent Act 1966 by the provisions of Section 4 of the same.

20 (b) The Defendant's Solicitors advise me that the burden of proving that the premises in question are not rent-controlled or that the Plaintiff falls within any of the exemptions of Section 4 of the Control of Rent Act 1966 rests on the Plaintiff. The Plaintiff's Affidavit does not provide any or sufficient evidence to discharge the Plaintiff's said Burden of Proof and perforce the Plaintiff's application for Summary Judgment must fail.

7. I am verily advised and believe that in view of the numerous triable issues of both fact and law, the Plaintiff is not entitled to enter Summary Judgment as claimed in the Summons in Chambers in respect of which this Affidavit in Reply is filed.

30 8. I am advised and believe that the Plaintiff is not entitled to repossession of the premises in question as claimed or at all and that the Plaintiff is not entitled to the sum of ₹4,000/- per month being double rental and that the Defendant is not illegally occupying the premises in question but occupies the same as a monthly tenant under the Control of Rent Act 1966.

40 9. I am advised and believe that the Defendant has good defences on the merits against the Plaintiff's claim which can be disputed in fact and law. The Defendant is not defending the Plaintiff's claim merely to cause delay but has filed its Defence and Counterclaim in the belief that it has a good defence on the merits both on the questions of law and fact.

10. I therefore pray that the Plaintiff's claim for Summary Judgment in the terms of the Summons-in-Chambers filed herein be dismissed with costs.

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Affirmed at Kuala Lumpur,)
this 30th day of January) Sd: Chue Jong
1976 at 10.10 a.m./) Keow

Before me,

Sd: Soo Kok Kwong
Commissioner for Oaths,
High Court,
Kuala Lumpur.

This Affidavit in Reply is filed by Messrs.
Allen & Gledhill, Advocates & Solicitors, Bangunan
U.M.B.C. (24th Floor), Jalan Sulaiman, Kuala
Lumpur, Solicitors for the Defendant abovenamed.

10

To: Messrs. Skrine & Co.,
Solicitors for the Plaintiff abovenamed,
Straits Trading Building,
4 Leboh Pasar Besar,
KUALA LUMPUR.

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No. 7

JUDGMENT OF MR. JUSTICE CHANG MIN TAT

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

20

Civil Suit No. 586 of 1975

B E T W E E N :

Malayan Railway Administration

Plaintiff

- and -

Station Hotels Berhad

Defendant

JUDGMENT

This is an O.14 application to sign final
judgment but can, on the pleadings which mainly
raise defences at law, be regarded as a proceeding
in lieu of demurrer under O.25 Rules of the Supreme
Court and disposed of as such.

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The plaintiff is the Malayan Railway
Administration, a corporation sole under s.4(1)

of the Railway Ordinance 1948. Its right to enter into contracts and sue thereon is provided by section 4(2). The defendant was the lessee under a lease in writing of a building known popularly as the Station Hotel Kuala Lumpur holding the same of the plaintiff for a term certain, and was in fact incorporated to hold the lease and operate the hotel.

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10 The relevant lease was for a term of five years commencing from January 1, 1968. It was never registered, but there could be no doubt about its effectiveness as an agreement to let. It contained the usual terms and conditions of a lease, but it signally contained no provision for a further term. However, when the term came to an end by the effluxion of time, an extension of one year was agreed to in writing between the parties. The extension expired on December 31, 1973.

20 When the defendant held over, the plaintiff took action to recover possession. It issued a writ, K.L. Civil Suit No. 870/74 on July 22, 1974, but it accepted tenders of rent for part of the period after the expiry of the term and on the advice it received that the defence of a further monthly tenancy could possibly succeed, it withdrew this action and it also caused a notice to be sent to the defendant, giving a celandar month's notice terminating the purported new tenancy. The notice expired on March 31, 1975. The present action was
30 then taken.

 The defendant continued to rely on this further monthly tenancy. By so doing, it had, as a result, removed from itself any possibility of reliance on whether the notice of termination was reasonably adequate under the circumstances.

 To the O.14 application, the defendant raised three defences at law. The first was that the premises were rent controlled premises. The second and third were based on constitutional provisions.

40 It was alleged by the defendant and not denied by the plaintiff that the defendant had managed the hotel business at the Railway Station premises since 1935. It meant that the lease entered into on January 1, 1965 was the last of a series of leases between the owner of the hotel premises and the defendant. It also meant that there was evidence common to both sides that the said building was

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erected before January 31, 1948 and came within s.4(2)(a) of the Control of Rent Act 1966. No reliance therefore was required to be laid on the alleged presumption, said by Mr. R. Tan, learned counsel for the defendant to have been established in Yong Chiang v. Bong Tihin Oi (1973) 2 M.L.J. 137, that the law presumes all premises to be rent-controlled until the contrary is proved. With respect, I do not think that that case is any authority for the proposition suggested. But that point is academic. In view of the undeniable evidence that the premises were in existence before January 31, 1948 and therefore came within s.4(a) of the Control of Rent Act 1966, they were rent-controlled, unless they also came within any of the exceptions in s.4(2)(b) or (c). Under sub-section (b), premises which are the property of the Government of the Federation or of the Government of any State and under sub-section (c) premises which are vested in or acquired by or on behalf of any municipality are free from the operation of the Control of Rent Act.

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On this point, the arguments of both counsel were, if I may say so without disrespect, brief. Mr. R. Tan argued that the plaintiff was clearly neither the Government of the Federation of Malaya nor of any State and was not a municipality to come under sub-section (c). Mr. Thayalan, learned counsel for the plaintiff, based his submission entirely on s.4(1A) of the Railway Ordinance 1948. This section is a new provision making applicable to the Railway Administration the written laws for the time being in force, as they apply to the Government of the Federation.

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With the greatest of respect, both submissions, in my view, miss the mark. The question must be in whom is the land in question vested. The title to the land on which the Station Hotel had been erected must therefore provide the answer.

Now, s.15 of the Railway Ordinance 1948 carries the marginal heading of "Vesting of property". It provides

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15. (1) Subject to the provisions of section 17 of this Ordinance all property, movable and immovable, which -

(a) immediately before the commencement of this Ordinance was, by virtue of section 92 of

the Malayan Union Order in Council, 1946, and the Railway Property (Vesting) Regulations, 1947, made thereunder, vested in the Governor of the Malayan Union for the purposes of the Malayan Railway; or

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10 (b) has been acquired since the coming into operation of the Malayan Union Order in Council, 1946, by His Majesty or by the Governor of the Malayan Union or by any officer of the Government, including officers of the railway, for the purposes of the Malayan Railway and was, immediately before the commencement of this Ordinance, held by His Majesty or by the Governor or such officer for such purposes,

20 shall, on the commencement of this Ordinance, and without any conveyance, assignment or transfer whatever, vest in the Federal Lands Commissioner for the purposes of the Malayan Railway for the like title, estate, or interest and on the like tenure as the same was vested or held immediately before the commencement of this Ordinance.

S.17 refers to existing leases and sub-leases of reserved land and has no relevance.

30 So, at the relevant time of the purported creation of a monthly tenancy by the acceptance of rents tendered and even at the time of the last written lease, the premises were vested in the Federal Lands Commissioner who is an officer incorporated under the Federal Lands Commissioner Ordinance (F.H. Ordinance No. 44 of 1957) for the vesting in him of all properties then vested in the Chief Secretary. I do not with respect think it necessary to belabour the point or to take the history of the land back to 1935 to the days of the Federated Malay States but it is, I believe, abundantly clear that the premises are the property of the Government of the Federation of Malaysia vested in the Federal Lands Commissioner for the purposes of the Malayan Railway Administration and therefore exempt from the operations of the Control of Rent Act 1966. The defendant's first defence therefore fails.

40 The next reliance by the defence was on Article 13 of the Federal Constitution. This Article provides that -

13. (1) No person shall be deprived of property
save in accordance with law.
- (2) No law shall provide for the compulsory
acquisition or use of property without
adequate compensation.

It would appear that the defendant claimed that it could not have his lease terminated except on terms as to compensation and indeed, it had counterclaimed for compensation. It however rejected the suggestion that its claim under this head, if maintainable, could be determined at the hearing of the counterclaim but should not hinder the application on the contention that the plaintiff's claim was itself bad, inter alia, by the mere fact that in attempting to recover possession, it had not offered compensation. 10

With respect, I cannot accept the validity of the contention. In my view, Clause 1 of Article 13 preserves the right to property as a fundamental liberty which can only be displaced by law while Clause 2 provides for adequate compensation for the compulsory acquisition or use of property. Under a law which enables the Government to acquire or use compulsorily another party's property, the exercise of the right cannot be bad if there has been due process and adequate compensation offered or paid in accordance with the law. Courts of law will undoubtedly rule as ultra vires any enactment which deprives a person of his property without offering adequate compensation. For example, in Bhagwani Bishere Tandon v. Deuhty Commissioner, Rewa District A.I.R. (1952) Vindhya Pradesh 78, it was held that the Vindhya Pradesh Requisition of Holdings and Premises and Fixation of Rent Ordinance III of 1949 was ultra vires to the extent of the non-provision of compensation payable to the tenants in respect of their interests in immovable property. But the defendant must indicate which law it was that purported to deprive it of its property and which it claimed to be ultra vires in not offering compensation for such deprivation. 20 30 40

As to this, it is clear beyond argument that on my ruling that the demised premises do not fall within the protective cover of the Control of Rent Act 1966, the law regulating the relationship of landlord and tenant between the plaintiff and the defendant is the law of contract or the common law. Under this law, the question in the case of a

termination of the lease is not so much deprivation of property as a breach of the contract of lease, if any, for which the real and substantive remedy of the tenant is a suit for damages, or for specific performance. This is clearly evident when the nature of the property in Article 13 is considered.

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10 The parallel article in the Indian Constitution is Article 31 of which Clause 1 reads as follows:

31 (1). No person shall be deprived of his property save by authority of law.

20 While it has been held, and it is obviously correct to hold that the terms "property" is wide enough to cover any interest including a temporary or precarious interest such as that of a mortgagee, lessee or tenant, see Gendalal Actilal v. Hathuradas A.I.R. (1951) Nag. 32, it has also been held in Jupiter General Insurance Co. Ltd. v. Rajagopalan & Anor. A.I.R. (1952) Punjab 8, that it means "proprietary rights in rem." In that case, the Divisional Court, accordingly, held that the benefit of a contract would not come within the meaning of the term "property" in deciding that the provisions of Sections 52A to 52C which had been added by the Insurance (Amendment) Act 1950 to the Insurance Act 1938 of India restricting the rights of insurance companies did not amount to the taking of possession of the property of those companies within the prohibition in Clause(2) to Article 31.

30 In Bhagat Kajindar v. State of Jammu & Kashmir & Anor. A.I.R. (196) J. & K. 50, a case dealing with the breach of one of the terms of a lease granted by the State Government and the right of the lessor to resume the property by reason of the breach, the full Bench of the High Court of Jammu and Kashmir held that "liable to resumption" clearly connoted that after the lessee had committed a breach of the terms of the lease, the lessor was entitled to resume the property, i.e. to re-enter the property and take possession of it and rejected the contention that the right of the lessee to remain in possession was a fundamental right and could be protected by the Court in these words:

"It is, however, difficult to agree with this contention once it is found that the

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petitioners have committed a breach of the terms of the lease so as to entitle the respondent to re-enter the premises. The right to remain in possession thereafter cannot be termed by any stretch of the imagination to be a fundamental right so as to attract the provisions of Article 32(2A) of the Jammu and Kashmir Constitution Application Order."

I need refer to only two more cases. In Rameshwar Croshad v. Commissioners, Land 10
Bharat & Ors. A.I.R. (1959) S.C. 498, it was held that where there was no legal transfer of the title to the trees in favour of the petitioners at any time either by grant of a fresh contract or by an extension of the period of the contracts which had expired, even though the forest officers had allowed the petitioners to work in the forest, the petitioners could not claim that the property in the trees in the areas worked by them passed to them legally through any sale made in their favour by the State or by any duly authorised officer. 20

Per Wanchoo J. in delivering the judgment of the Supreme Court at p. 564:

"Our conclusion therefore is that in all these cases, no legal right to property in the trees passed to the petitioners. It is well-settled that no petition under Art. 32 is maintainable, unless it is shown that the petitioner has some fundamental right. The fundamental right claimed in these cases is that the property which the State of Madhya Bharat (now Madhya Pradesh) is not permitting the petitioners to remove from the forests is property which they have a right to hold and dispose of. This could only be so if the property in the trees or the charcoal or kattha which have been manufactured, passed to the petitioners. No such property, however, passed to the petitioners. In the circumstances they have no right to maintain these petitions on the ground that they have a fundamental right to hold and dispose of their property, in the absence of any law authorising the State to deprive them of it." 30 40

In Achutan v. The State of Kerala & Ors. A.I.R. (1959) S.C. 490, the facts briefly were that the petitioner had held contracts for the supply of

10 milk to the Government Hospital at Cannanore since 1946. Previous to this, his brother in the same business held similar contracts from 1936. It will be seen therefore that like the defendant in the present case, the petitioner had a long standing contractual relationship with the Government. In 1957 the petitioner and the Co-operative Milk Supplies Society Cannanore submitted their respective tenders for the supply of milk. The petitioner's tender was accepted. Subsequently the petitioner was informed that the contract for the supply of milk given to him was cancelled. He was informed that it was the policy of Government that in the matter of supply to Government medical institutions in Cannanore District, the Co-operative Milk Supplies Union was to be given contracts on the basis of prices fixed by the Revenue Department and not at current market rates which formed the basis of the petitioner's tender. His contract was, after some correspondence, determined by due notice. The petitioner sought under Article 32 which confers a right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights, to rely on Articles 14 and 16(1) guaranteeing equality before the law and equality of opportunity in matters of public employment, on Article 19(1)(g) which guarantees as fundamental the right to carry on any occupation, trade or business and on Article 31, supra. The judgment of the Supreme Court was delivered by . Hidavatullah J. (later C.J.) in these words:

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40 "The gist of the present matter is the breach, if any, of the contract said to have been given to the petitioner which has been cancelled either for good or bad reasons. There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfill contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Art. 14 because the choice of the person to fulfil a particular contract must be left to the Government. Similarly, a contract which is held from Government stands on no different footing from a contract held from a private party. The breach of the contract, if any, may entitle a person aggrieved to sue for damages or in appropriate cases, even

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specific performance, but he cannot complain that there has been a deprivation of the right to carry on any occupation, trade or business such as is contemplated by Art. 19(1)(g). Nor has it been shown how Art. 31 of the Constitution may be invoked to prevent cancellation of a contract in exercise of powers conferred by one of the terms of the contract itself."

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The law thus seems to be reasonably clear. Where the premises do not come within the protection of the Control of Rent Act, 1966, the relationship between landlord and tenant is generally a matter of contract and the law regulating this relationship is the law of contract or the common law. If the landlord is in breach of a term of the lease, he can be sued for damages and, in certain circumstances, for specific performance. The Government is in the position of a private lessor. It has no more rights and is under no greater liabilities than an individual. A lessee holding premises of the Government does so on the terms of the lease. His contractual right under the lease is not "property" within the meaning of Article 13. His leasehold interest can be determined by the Government in accordance with the terms of the lease. Such a determination is not deprivation of property within Article 13, and there is no question of his fundamental liberties under the Constitution being affected in such a case. He has no right to remain in possession under cover of a fundamental liberty.

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A fortiori, where a lease of uncontrolled premises is determined by effluxion of time, in other words, where a lessee has obtained all that he has bargained for and has enjoyed the full term that was granted to him on a consensual contract, he has no right to hold over after the expiry of the term or to demand a renewal of the lease or a further term, in the absence of any such provision in the expired lease, either in contract or under the common law or under the Constitution. Where there can be no breach of contract as in the case of a lease that has run out in the fullness of time, there is therefore no right to damages or to specific performance. For obvious reasons, I must refrain from further touching on the question of compensation, and I must leave it to the defendant to proceed with its counterclaim for compensation if it is so advised, but it has no property in the premises which would come within Article 13 of the Constitution.

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The defendant further argued that the revocation of refusal to renew the lease and the relevant permits to operate the hotel and its ancillary facilities offended against Clauses 7 and 8 of Article 153 of the Federal Constitution. This Article provides for the reservation of quotas in respect of services, permits and so forth for Malays in order to safeguard their special position. Clause 7 however provides that

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"Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events."

Clause 8 provides for a reservation of a proportion of such permits or licences but so as not to deprive or authorise the deprivation of any person of "any right, privilege, permit or licence accrued to or enjoyed or held by him" or authorise a refusal to renew any such permit or licence where such renewal might reasonably be expected in the ordinary course of events.

But with respect the same authorities in my view dispose of this argument as plainly untenable. If the petitioner Achutan could not maintain his objection to the cancellation, much less his claim to a right to a renewal of his contract to supply milk to the hospital for the same constitutional arguments, I cannot, with respect, see how the defendant could be said to have a right to the renewal of the lease or the permits or licences, which were necessary for the operation of a hotel and the services it provided.

This will be seen the more clearly when it is realised that what a licence does is to regulate a business and what a permit does is to provide for something without which a business can never be started. The permits and licences to operate the hotel must be attached to the tenure of the premises and where the defendant had lost its right to a lease of the premises, it could not call for the issue of inoperational and inoperative

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licences or permits, than which there could hardly be a greater example of an exercise in fatuity. There could be no reasonable expectation for the issue or renewal of the permits or licences where the foundation or basis for their issue, that is, the lease was not there. Finally even if it is true that the reason for not granting the defendant a new lease and new licences and permits is to reserve the same for Malays under the reservations in Article 153, I am nevertheless bound on the law to hold that in the absence of any deprivation of property which the defendant had, it could not for this reason alone demand a renewal of the lease or a grant of a new one, or for the issue of the necessary permits or licences for these premises. If in India, with the provisions of equality in Article 14 and the protection inter alia of the right of all citizens to carry on any occupation, trade or business, subject to certain provisions in the interest of the country in Article 19(1)(g), the same petitioner Achutan could not succeed, his chances of success would be even less in this country with its specific constitutional reservations for the special position of the Malays.

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The facts of the present case are that the defendant's lease has expired and the implied monthly tenancy that was said to have arisen from the acceptance of rent tendered and received after the expiry has been duly determined by a calendar month's notice, as to the sufficiency of which, its counsel has not questioned. In the circumstances and applying the law which I hope I have correctly set out, the defendant has no right to remain or any hope or expectation of a further term.

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This should conclude the matter but there is in the written submission an allegation of an "irrevocable licence coupled with an interest in the premises". This defence was however not raised in the pleadings and I am extremely doubtful whether the defence could raise this equity, known generally as an irrevocable licence coupled with a grant, as raised in Ramsden v. Dyson (1866) I.R. 1 H.L.129 and followed by the Privy Council in Elinger v. The Mayor, etc. of the City of Wellington (1884) 9 App. Cas. 699, particularly as no facts had been alleged of an expectation or hope of a grant encouraged by the landlord and causing the lessee to alter his position for the worse by an expenditure of money. In any event, having regard to the central fact of a concluded agreement between the parties, it must

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be apparent that the defendant's case, if it could allege any expenditure of money, falls within the second limb of Lord Kingsdown's speech in Ramsden v. Dyson, supra, at p. 170 rather than the first. The second is in these words:

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"If on the other hand, a tenant being in possession of land and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or as allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any court of law or equity can enforce. This was the principle of the decision in Millay v. Armitage 12 Vesp. 78 and like the decision in Gregory v. Miguell (14 Vesp. 328) seems founded on plain rules of reason and justice."

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Indeed its case seems to me to be more akin to Seong Co. Ltd. v. Teo Cheor Siu (1956) M.I.J. 16 than to Lee Eng Teh & Ors. v. Tah Thiung & Anor. (1967) 1 M.I.J. 42. In other words, there is, with respect, no substance in this contention.

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Finally, I note in the defence that had been delivered a claim in respect of excess payments of rents. This was not touched upon in the submissions, either orally or in writing, but again if there is any truth in it, it must be the subject of the counterclaim and it could not stand in the way of the claim to possession which was otherwise well-founded.

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All this is perhaps unfortunate for the defendant. To its directors and shareholders, the business at the Station Hotel in Kuala Lumpur may well have become a way of life. Its patrons may regret the going of yet another landmark and with some nostalgia may soon miss all that this established service means. But the whole point is that on the facts in the pleadings and on the law, the defendant has no right which any court of law or equity can enforce.

There must, therefore be an order for possession and for costs.

I now invite counsel to work out the exact terms of the order.

Kuala Lumpur,
3rd May, 1976.

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Mr. H. Thayalan of Messrs. Skrine & Co. for
Plaintiff.

Mr. Roger K.N. Tan, of Messrs. Allen Gledhill for
Defendant.

No. 8
Order
3rd May 1976.

No. 8
O R D E R

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Civil Suit No. 586 of 1975

B E T W E E N :

Malayan Railway Administration Plaintiff 10

- and -

Station Hotels Berhad Defendant

BEFORE THE HONOURABLE MR. JUSTICE CHANG MIN TAT.

THIS 3RD DAY OF MAY, 1976.

IN OPEN COURT

O R D E R

THIS SUMMONS coming on for hearing on 12th day of March 1976 in open court in the presence of Mr. Thayalan Kanapathippillai of Counsel for the Plaintiff and Mr. Roger Tan of Counsel for the Defendant abovenamed AND UPON READING the Summons in Chambers dated the 22nd day of September 1975, the Affidavit of Zainuddin bin Awan Ngam affirmed on the 22nd day of September, 1975, the Affidavit of T. Selvarantnam affirmed on the 21st day of April, 1975, the Affidavit of Lim Heo Hong affirmed on the 13th day of May, 1975 and the Affidavit of Chue Jong Keow affirmed on the 30th day of January 1976 and all filed herein AND UPON HEARING the arguments of Counsel aforesaid IT WAS ORDERED that this application do stand for judgment and the same coming on for judgment this day in the presence of Mr. Thayalan Kanapathippillai of Counsel for the

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30

10 Plaintiff and Mr. Tay Ann Tong of Counsel for the Defendant abovenamed IT IS ORDERED that the Defendant and all persons holding through it 'or' under it do forthwith quit and deliver up and vacate and hand over possession of the premises known as 'Station Hotel, Kuala Lumpur' under Railway Reserve Lot No. 13 to the Plaintiff AND IT IS ORDERED that the Defendant and the person holding through it or under it be and are hereby restrained from remaining on or containing to remain on the said premises AND IT IS FURTHER ORDERED that the Defendant do pay a sum of \$4,000/- per month being double rent from 1st March 1975 till vacant possession is given to the Plaintiff AND IT IS LASTLY ORDERED that the costs of suit be assessed at \$300/- and be paid by the Defendant to the Plaintiff.

In the High Court of Malaya
No. 8
Order
3rd May 1976.
(cont'd)

Given under my hand and the seal of the Court this 3rd day of May, 1976.

20 L.S. (Sd) Lim Heng Seng.
Senior Assistant Registrar,
High Court, Kuala Lumpur.

No. 9

NOTICE OF APPEAL

In the Federal Court

No. 9
Notice of Appeal
11th May 1976.

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: of 1976

B E T W E E N :

Station Hotels Berhad

Appellant

30 - and -

Malayan Railway Administration

Respondent

(In the matter of Civil Suit No. 586 of 1975 in the High Court in Malaya at Kuala Lumpur

In the Federal
Court

No. 9
Notice of
Appeal
11th May 1976.
(cont'd)

Between

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant)

NOTICE OF APPEAL

TAKE NOTICE that the Appellant abovenamed,
Station Hotels Berhad being dissatisfied with the
decision of the Honourable Mr. Justice Chang Min
Tat given at Kuala Lumpur on the 3rd day of May,
1976 appeals to the Federal Court against the whole 10
of the said decision.

Dated this 11th day of May, 1976.

(sd).....

Solicitors for the Appellant.

To: The Registrar,
Federal Court,
Malaysia.

And to:

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

20

And to:

The Respondent abovenamed
or their Solicitors,
Messrs. Skrine & Co.,
Straits Trading Building,
No. 4, Leboh Pasar,
Kuala Lumpur.

The address for service on the Appellant is
care of its Solicitors, Messrs. ALLEN & GLEDHILL,
Kangunan UMBC, (24th Floor) Jalan Sulaiman, Kuala
Lumpur.

30

MEMORANDUM OF APPEAL

No. 10
Memorandum
of Appeal
21st June 1976.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 of 1976

B E T W E E N :

Station Hotels Berhad Appellants

- and -

10 Malayan Railway Administration Respondents

(In the Matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur.

Between

Malayan Railway Administration Plaintiffs

- and -

Station Hotels Berhad Defendants)

MEMORANDUM OF APPEAL

20 The Appellants, Station Hotels Berhad, abovenamed, appeals to the Federal Court against the whole decision of the Honourable Mr. Justice Chang Min Tat given in the High Court at Kuala Lumpur on the 3rd day of May 1976 on the following grounds:-

1. That the Learned Judge was wrong in finding that the Appellants were not a tenant protected by the provisions of the Control of Rent Act 1966.

30 2. That the Learned Judge was wrong in finding that the Appellants were not protected by the provisions of Article 13 of the Federal Constitution and that insofar as the Respondents made no compensation or offer of compensation to the Appellants for the Appellants' intended eviction from premises known as "Station Hotels, Kuala

Lumpur", the Respondents acts pertaining to the said eviction are unconstitutional and thus null and void.

3. That the Learned Judge was wrong in holding that the Appellants loss of goodwill does not amount to a loss of "property" within the provisions of Article 13 of the Federal Constitution.

4. That the Learned Judge was wrong in holding that the revocation or refusal to renew the relevant lease and permits in favour of the Appellants offends the provision of Article 153 clauses 7 and 8 of the Federal Constitution. 10

5. That the Learned Judge was wrong in holding that there were no triable issues and in granting summary judgment to the Respondents.

6. That the Learned Judge failed to appreciate:-

(a) that the Respondents by their own pleadings admit that the premises known as "Station Hotels Kuala Lumpur" vests in the Malayan Railway Administration itself; 20

(b) that the Respondents are a corporation sole having a legal identity of its own and can at no time be equated with the Federal Government or treated in law as such;

(c) that property vested in the Federal Lands Commissioner for the purposes of the Respondents cannot be equated with property vested in the Federal Lands Commissioner for the purposes of the Federal Government and therefore the Respondents cannot fall within the exemption of Section 4(2) (b) of the Control of Rent Act 1966; 30

(d) that the Appellants by being evicted suffers a loss of goodwill and that such goodwill falls within the definition of "property" in Article 13 of the Federal Constitution; 40

(e) that the Respondents by agreement have granted not merely a tenancy but rights

privileges permit or licence to the Appellants in respect of Station Hotels Kuala Lumpur within the meaning of Article 153 (7) and (8) of the Federal Constitution.

In the Federal Court

No. 10
Memorandum
of Appeal
21st June 1976
(cont'd)

7. That the Learned Judge should have held:-

- 10 (a) that the Appellants were a tenant protected by the provisions of the Control of Rent Act 1966;
- (b) that the Appellants were protected by the provisions of Article 13 of the Federal Constitution;
- (c) that the Appellants were protected by the provisions of Article 153 (7) and (8) of the Federal Constitution;
- 20 (d) that the Appellants have raised sufficient triable issues of fact and law to disentitle the Respondents from obtaining summary judgment against the Appellants and that the Appellants should have been given unconditional leave to defend.

Dated this 21st day of June, 1976.

(sd).....

Solicitors for the Appellants.

- To: 1. The Chief Registrar,
Federal Court,
Kuala Lumpur.
- 30 2. The Senior Assistant Registrar,
High Court,
Kuala Lumpur.
3. Skrine & Co.,
Solicitors for the Respondents,
Kuala Lumpur.

This Memorandum of Appeal is filed by Messrs. Allen & Gledhill, Solicitors for the Appellants abovenamed, whose address for service is c/o Allen & Gledhill, Kanganan UMBC, (24th Floor), Jalan Sulaiman, Kuala Lumpur.

In the Federal
Court

No. 11

JUDGMENT OF S.S. GILL C.J. MALAYA

No. 11
Judgment of
S.S. Gill, C.J.
Malaya, 13th
November 1976.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad Appellants

- and -

Malayan Railway Administration Respondents 10

(In the matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur

Between

Malayan Railway Administration Plaintiffs

- and -

Station Hotels Berhad Defendants)

Coram: S.S. Gill, C.J., Malaya
Alia Hassan, F.J.
H.S. Ong, F.J.

JUDGMENT OF S.S. GILL, C.J. MALAYA 20

This is an appeal from the judgment of Chang Min Tat J. on an Order 14 application requiring the appellant as defendant in the action to deliver to the respondent as plaintiff vacant possession of premises known as "Station Hotel Kuala Lumpur" and situate on Railway Reserve Lot No. 13.

The facts of the case are not in dispute. The defendant has been the tenant of the premises since 1935 under a series of leases, the details of which are immaterial. The tenancy was finally terminated by a calendar month's notice expiring on 31st March, 1975. The plaintiff is a corporation 30

sole under section 4(1) of the Railway Ordinance, 1948. Under section 15(1) of the Ordinance, all "railway land" is vested in the Federal Lands Commissioner, a public officer appointed under the Federal Lands Commissioner Ordinance 1957, for the purposes of the Malayan Railway. Sections 21 and 22 of the Ordinance empower the plaintiff to grant leases of immovable property and railway reserves. The plaintiff's right to enter into contracts and sue and be sued thereon is contained in section 4(2) of the Ordinance.

In the Federal Court

No. 11
Judgment of
S.S. Gill, C.J.
Malaya, 13th
November 1976.
(cont'd)

To the application by the plaintiff for judgment under Order 14 the defendant raised three defences in law. The first of such defences was that the premises are rent controlled premises. It is common ground that the premises were built before 31st January 1948 so that they are rent controlled under section 4(1) of the Control of Rent Act 1966, unless they are the property of the Government of the Federation or of the Government of any State, in which case they are free from the operation of the Act by virtue of section 4(2)(b).

At the hearing before the learned Judge, counsel for the defendant argued that the plaintiff was clearly neither the Government of the Federation of Malaya nor of any State. Counsel for the plaintiff based his submission entirely on section 4(1A) of the Railway Ordinance 1948 which makes applicable to the Railway Administration the written laws for the time being in force in the same manner as they apply to the Government of the Federation. The learned Judge took the view that both submissions missed the mark, as the question to be decided was in whom the land in question was vested. In his opinion, the title to the land on which the Station Hotel had been erected must provide the answer to that question. In this connection, having considered the provisions of section 15 of the Railway Ordinance 1948, the learned Judge arrived at the conclusion that as the premises are vested in the Federal Lands Commissioner for the purpose of the Malayan Railway Administration they are the property of the Government of the Federation of Malaysia and therefore exempt from the operation of the Control of Rent Act 1966. He therefore ruled that the first defence must fail.

The defendant's second defence in law was founded on Article 13 of the Constitution which provides (1) that no person shall be deprived of

In the Federal
Court

No. 11
Judgment of
S.S. Gill, C.J.
Malaya, 13th
November 1976.
(cont'd)

property save in accordance with law and (2) that no law shall provide for the compulsory acquisition or use of property without adequate compensation. It was contended that in attempting to recover possession of the premises the plaintiff had not offered compensation to the defendant. The learned Judge found no validity in that contention because the defendant failed to indicate which law it was that purported to deprive it of its property and which it claimed to be ultra vires in not offering compensation for such deprivation. Clearly there was no question of compulsory acquisition of property in this case so as to entitle the defendant to any compensation.

10

As regards deprivation of property save in accordance with law, the learned Judge held that the question in the case of termination of the lease is not so much deprivation of property as of a breach of the contract of lease, if any, for which the real and substantive remedy of the tenant is a suit for damages or for specific performance. As the grounds of appeal arising out of the rejection of this second defence have been abandoned, I do not think it necessary to deal with this question any further.

20

The third and last defence in law raised by the defendant was based on Article 153 of the Constitution which provides for the reservation of quotas in respect of services, permits and so forth for Malays in order to safeguard their special position. Clause 7 provides:-

30

"Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events."

40

The learned Judge found no merit in this defence for the reasons which are set out in his judgment as follows.

What a licence does is to regulate a business and what a permit does is to provide for something without which a business can never be started. The

10 permits and licences to operate the hotel must be
attached to the tenure of the premises, so that
where the defendant had lost its right to a lease
of the premises, it could not call for the issue
of inoperational and inoperative licences or
permits. There can be no reasonable expectation
for the issue or renewal of the permits or
licences where the foundation or basis for their
issue, that is, the lease, was not there. Even
20 if it is true that the reason for not granting to
the defendant a new lease and new licences and
permits was to reserve the same for Malays under
the reservations of Article 153, for that reason
alone, in the absence of any deprivation of any
of its property, the defendant could not demand a
renewal of the lease or the grant of a new one, or
for the issue of the necessary permits or licences
for the premises in question. The facts of the
30 present case are that the defendant's lease has
expired and the implied monthly tenancy that was
said to have arisen from the acceptance of rent
tendered and received after the expiry has been
duly determined by a calendar month's notice, the
sufficiency of which was not questioned. In the
circumstances the defendant has no right to remain
or any hope or expectation of a further term.

30 The appeal before us was argued on two main
grounds. The first ground is that the learned
Judge was wrong in finding that the appellant is
not a tenant protected by the provisions of the
Control of Rent Act 1966. The argument in support
of this ground is that as the land on which the
hotel stands is vested in the Federal Lands
Commissioner for the purposes of the Malayan
Railway, it is not the property of the Federal
Government but that of the Malayan Railway which is
a statutory corporation under the Railway Ordinance
1948, and that the Federal Lands Commissioner is
40 nothing but a trustee for the Malayan Railway. I
do not think this argument is tenable because the
fact that the land is vested in the Federal Lands
Commissioner, an officer of the Federal Government
appointed for that purpose, shows that the land
belongs to the Government.

50 Although the land is vested in the Federal
Lands Commissioner, the respondent is authorised by
the Railway Ordinance to enter into contracts in
respect of such land and to sue and be sued thereon
in its own name. That is what has happened in the
present case. It is true that the respondent is

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Court

No. 11
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S.S. Gill, C.J.
Malaya. 13th
November 1976.
(cont'd)

not the registered owner of the premises, as averred in the Statement of Claim, but its right to sue for the recovery of possession of the premises has never been in question. For instance, it was never the appellant's case that the proper person to sue was somebody other than the respondent.

Assuming that the land on which the hotel stands is the property of the Malayan Railway, as argued by the appellant, the premises are still exempt from the operation of the Control of Rent Act 1966 because that Act applies to the Railway Administration in the same manner as it applies to the Government of the Federation by virtue of section 4(1A) of the Railway Ordinance 1948. This was the argument taken by the plaintiff before the learned Judge in the court below. Although the learned Judge ruled that that argument missed the mark, with respect it was a complete answer in itself to the defendant's claim that the Control of Rent Act 1966 does not apply to the premises.

10

20

The second main ground of appeal is that the learned Judge was wrong in holding that the revocation or refusal to renew the relevant leases and terms in favour of the appellant does not offend the provisions of Article 153 Clauses 7 and 8 of the Federal Constitution. In my judgment the learned Judge was not wrong in so holding because of the reasons which he has stated in his judgment in such lucid terms, with which I entirely agree with respect.

30

All that counsel for the appellant said on this ground was that this was not a proper matter to be dealt with on the basis of Order 25. There was a similar argument in relation to the first ground. And it was submitted generally that as the defendant had raised several triable issues it should have been granted leave to defend. In my opinion the issues raised were all issues of law which were rightly disposed of by the learned Judge under Order 14 and on the basis of Order 25 of the Rules of the Supreme Court 1957.

40

The issues in this case are simple issues of law. There is no dispute about the facts. The land on which the hotel stands is vested in the Federal Lands Commissioner. It is therefore the property of the Federal Government, so that it is exempt from the operation of the Control of Rent Act by reason of section 4(2)(b). Assuming that

the land is the property of the Malayan Railway Administration, even then the Control of Rent Act does not apply to it because of section 4(1A) of the Railway Ordinance. Article 153 of the Constitution, in my judgment, has no application to cases of contractual rights.

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S.S. Gill, C.J.
Malaya. 13th
November 1976.
(cont'd)

I would dismiss this appeal with costs.

(Sd. S.S. Gill)
Chief Justice,
Malaya.

10

Kuala Lumpur,

13th November, 1976.

Encik R.C. Hoffman with Encik Roger Tan for
Appellants. Solicitors: Messrs. Allen & Gledhill.

Encik K. Thayalan for Respondents.
Solicitors: Messrs. Skrine & Co.

No. 12

JUDGMENT OF ALI F.J.

No. 12
Judgment of
Ali F.J.
13th November
1976.

20

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad

Appellants

- and -

Malayan Railway Administration

Respondents

(In the matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur

Between :

30

Malayan Railway Administration

Plaintiffs

- and -

Station Hotels Berhad

Defendants)

In the Federal
Court

Coram: Gill, Chief Justice Malaya,
Ali, Federal Judge,
Ong, Federal Judge.

No. 12
Judgment of
Ali F.J.
13th November
1976.
(cont'd)

JUDGMENT OF ALI, F.J.

In this appeal two questions fall to be considered, namely (a) whether the Station Hotel, Kuala Lumpur is controlled premises subject to the Control of Rent Act, 1966; and (b) whether the refusal by the Railway Administration to renew the lease of the Hotel to the appellants, Station Hotels Berhad, was a breach of Clause (7) of Article 153 of the Federal Constitution.

10

On an application by the Malayan Railway Administration for summary judgment under Order 14 Chang Min Tat J. answered both questions in the negative and saying in his judgment that he was disposing them of before trial under Order 25.

In the memorandum of appeal nothing turned on Order 25 but counsel for the appellants did submit that it was inapplicable. In my view as counsel for both parties had argued the two questions fully before him the learned Judge must have assumed in terms of rule 2 of the Order both parties consented to have the questions decided before trial. In any case as under Order 14 rule 1(a) the learned Judge would have to be satisfied whether or not the appellants have a good defence to the action it was necessary for him to consider the two questions. Having disposed of that I shall proceed to deal with the two questions.

20

30

Both questions (a) and (b) arose out of an action by the Malayan Railway Administration to recover possession of the Hotel building which had been leased to the appellants under an agreement of lease dated sometime in 1968. Although the period of the lease had expired the appellants remained in occupation as yearly tenants under agreements during 1973 and 1974. In July, 1974 there was an attempt to terminate the tenancy by notice to quit which was followed by an action for possession. Having doubts as to the effectiveness of the notice the Malayan Railway Administration decided to withdraw the action. A fresh notice was issued terminating the tenancy on or before March 31, 1975. The appellants did not quit and the Railway Administration commenced the action in these proceedings. Although several questions were raised in the defence pleadings only

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the two questions referred to above fall to be determined in this appeal.

In the Federal
Court

No. 12
Judgment of
Ali F.J.
13th November
1976.
(cont'd)

10 Question (a) arose out of the appellants' contention that inasmuch as the Hotel was admittedly constructed or completed before 31st January, 1948 it is controlled premises subject to the Control of Rent Act 1966. The respondents, however, maintained that the Hotel is not subject to the Act being the property of the Government of the Federation within the meaning of section 4(2) (b) or alternatively even if it is not the property of the Government but the property of the Malayan Railway Administration it is not subject to the Control of Rent Act, 1966 by reason of section 4 (1A) of the Railway Ordinance. Section 4 (1A) provides -

20 "The written laws for the time being in force in the Federation or in any part thereof shall, except where otherwise expressly provided, apply to the Railway Administration in the same manner as they apply to the Government of the Federation and any person in the service of the Railway Administration shall, except where otherwise expressly provided by any other written law, be deemed to be also in the service of the Government of the Federation."

30 The learned Judge did not think this provision relevant. I respectfully agree. It is, as it seems to me, a deeming provision, the object of which was to extend any written law applicable to a Government servant to "any person in the service of the Railway Administration". If the object was to extend any written law applicable to Government property to the property of the Railway Administration, as was argued by Mr. Thayalan, counsel for the respondents, section 4(1A) would have been differently worded. I would also observe that the section was incorporated in the Railway Ordinance
40 long before the Control of Rent Act, 1966 came into force.

The learned Judge was apparently of the view that the vesting of property in the Federal Lands Commissioner under section 15 of the Railway Ordinance has the effect of making any immovable property acquired or purchased under section 14 for the purpose of the Malayan Railway the property of the Government. The fact, however, is that the land

In the Federal
Court

No. 12
Judgment of
Ali F.J.
13th November
1976.
(cont'd)

in question could not have been acquired or purchased under section 14. In paragraph 1 of the statement of claim it is referred to as Railway Reserve Lot No. 13 which could only mean that it is one of the railway reserves mentioned in section 18 (8) of the Railway Ordinance. Reserved lands are not alienated lands which can be acquired or purchased. They are not vested in any person or authority. In the case of Railway reserves they are lands reserved for railway purpose which is Federal purpose. See section 10(b) of the Federal List in the Ninth Schedule to the Federal Constitution. Clause (3) of Article 85 of the Constitution provides that land in a State which is reserved for federal purpose shall not cease to be so reserved and all lands so reserved shall be controlled and managed by or on behalf of the Federal Government.

10

In my opinion the land on which the Station Hotel stands is land reserved for Federal purpose controlled and managed by the Railway Administration for and on behalf of the Federal Government. For all practical purposes it can be regarded as the property of the Federal Government. The word "property" in section 4(2)(b) of the Control of Rent Act 1966 is not defined so as to mean, as regards immovable property, land which is registered in the name of the Federal Government. The answer to question (a) must, therefore, be that the Station Hotel land is the property of the Federal Government not subject to the Control of Rent Act, 1966.

20

30

Question (b) can be disposed of in a few words. The arguments on behalf of the appellants was that the refusal by the Malayan Railway Administration to renew the agreement of lease to the appellants was a breach of clause (7) of Article 153 of the Federal Constitution. Strictly speaking clause (7) merely declares that nothing which is done under Article 153 shall operate to deprive any person of any rights to any permits, licences etc. In other words any reservation of quotas in respect of such matters shall not operate to deprive others of their rights to the same thing. In this case there was no evidence that the agreement of lease was being reserved for Malays under the Article. The complaint by the appellants in their affidavit was that since the agreement had been renewed 20 times the refusal to renew it was a breach of clause (7) of the Article. I am clearly of the view that there was no breach.

40

50

Under section 22(1)(a) of the Railway Ordinance the General Manager is empowered to grant leases of railway reserves for a period of thirty years subject to such terms and conditions. In other words the General Manager has the power to enter into a contract in respect of reserved lands. If at all there was a right to renewal it could only arise from such contract. The answer to question (b) is clearly that there was no breach of Article 153 of the Federal Constitution by reason of the failure to renew the lease.

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Judgment of
Ali F.J.
13th November
1976.
(cont'd)

10

A question was also raised under Article 13 of the Constitution but this was not proceeded with at the hearing of this appeal.

On the answers given to the two questions above I agree that this appeal be dismissed with costs.

Kuala Lumpur,
13th November, 1976.

(sd)(Ali bin Hassan)
Judge,
Federal Court, Malaysia.

20

Counsel -

Encik R.C. Hoffman (Encik Roger Tan with him) for appellants (M/s Allen & Gledhill).

Encik K. Thayalan for respondents (M/s Skrine & Co.)

No. 13

JUDGMENT OF ONG HOCK SIM, F.J.

No. 13
Judgment of
Ong Hock Sim,
F.J. 13th
November 1976.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

30

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad

Appellants

- and -

Malayan Railway Administration

Respondents

In the Federal
Court

No. 13
Judgment of
Ong Hock Sim,
F.J. 13th
November 1976.
(cont'd)

(In the matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur

Between

Malayan Railway Administration Plaintiffs

- and -

Station Hotels Berhad Defendants)

Coram: S.S. Gill, C.J., Malaya
Ali. Hassan, F.J.
H.S. Ong, F.J.

JUDGMENT OF ONG HOCK SIM, F.J.

10

With respect, I disagree with the learned
Judge.

To my mind, the issue is one of simple
interpretation. Are the premises rent-controlled
and entitled to protection of the Control of Rent
Act, 1966? It is undisputed that the premises were
constructed before 31st January, 1948. What is up
for decision is whether the premises in question is
property of the Government of the Federation within
the meaning of Section 4(2)(b) of the Control of
Rent Act and therefore outside the ambit of the Act.
I am of the view that it is not necessary to deal
with the other grounds.

20

My main concern, without indulging in
arguments as to vesting, and other questions as to
present entitlement to the property concerned, is
who is the owner in law. The suit is not
instituted by the Government of Malaysia in the first
instance. The Malayan Railways may have been
conferred with a status of some sort, but it is not
the Government of the Federation nor is the Federal
Government in any way invested with proprietary
rights over the Station Hotel. True, Railway
property is now vested in the Federal Lands
Commissioner by virtue of section 15 who holds it
"for the purposes of the Malayan Railway." He is,
in my view, a trustee of the land for the Railway.
Such vesting does not divest the Railway of its
rights and effect a transfer of the property to
the Government.

30

40

Here, I may advert to paragraph 1 of the
Statement of Claim. This reads:-

" 1. The Plaintiff is a corporate body established under the Railway Ordinance 1948, and is the registered owner of the premises constituting 'Station Hotel Kuala Lumpur' and held under the Railway Reserve Lot No. 13 in the district of Kuala Lumpur (hereinafter referred to as the said premises)."

In the Federal Court
No. 13
Judgment of
Ong Hock Sim,
F.J. 13th
November 1976.
(cont'd)

10 In the light of the Pleadings, it was, in my view, not open to the learned Judge to depart therefrom and hold the premises to be the "property of the Government of the Federation". I do not need to deal with estoppel.

I am of the view, and I am not prepared to hold, that the issue in this case is crystal clear and I do not think it a fit case for invoking Order 14 or Order 25.

20 I would allow the appeal and direct that unconditional leave to defend be granted to the Appellants. Costs of this Appeal and in the Court below to Appellants. Deposit refunded.

(Sgd.) H.S. Ong,
Judge.
(TAN SRI DATUK ONG HOCK SIM)
JUDGE,
FEDERAL COURT,
MALAYSIA.

Kuala Lumpur,
13th November, 1976.

30 Counsel:

Encik R.C. Hoffman with Encik Roger Tan for Appellants. Solicitors: Messrs. Allen & Gledhill.

Encik K. Thayalan for Respondents.
Solicitors: Messrs. Skrine & Co.

No. 14

NOTICE OF CHANGE OF SOLICITORS
(APPELLANT)

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

40

No. 14
Notice of
Change of
Solicitors
(Appellant)
23rd November
1976.

In the Federal Court

FEDERAL COURT CIVIL APPEAL NO. 60 of 1976

No. 14
Notice of
Change of
Solicitors
(Appellant)
23rd November
1976.
(cont'd)

B E T W E E N :

Station Hotels Berhad Appellants

- and -

Malayan Railway Administration Respondents

(In the matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur

Between :

Malayan Railway Administration Plaintiffs

- and -

Station Hotels Berhad Defendants)

10

CHANGE OF SOLICITORS

To: The Chief Registrar,
Federal Court,
Kuala Lumpur.

ENTER our name as Solicitors for Station
Hotels Berhad, the abovementioned Appellants in
this suit in place of Messrs. Allen & Gledhill.

The address for service is at 3rd Floor,
U.M.B.C. Building, No: 42, Jalan Tun Perak, Kuala
Lumpur 01-03.

20

Dated this 23rd day of November, 1976.

We consent,

(sd) Alan Gledhill..... (sd) DR. Stephen Goh & Yussof Ahmad
Solicitors on Record Solicitors for Appellants

This Change of Solicitors is filed by Messrs.
Dr. Stephen Goh & Yussof Ahmad, Solicitors for the
Appellants abovenamed whose address for service is
at 3rd Floor, UMBC Building, No. 42 Jalan Tun Perak,
Kuala Lumpur.

30

No. 15

In the Federal
Court

AFFIDAVIT OF CHUE JONG KEOW (APPELLANT)

No. 15
Affidavit of
Chue Jong Keow
sworn, 16th
December, 1976.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad Appellants

- and -

10 Malayan Railway Administration Respondents

(In the matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur)

Between :

Malayan Railway Administration Plaintiffs

- and -

Station Hotels Berhad Defendants)

A F F I D A V I T

20 I, CHUE JONG KEOW of full age residing at No.
26, Road 1/4, Petaling Jaya, do hereby affirm and
say as follows :-

1. I am the Manager of the Appellants' company
and am duly authorised by the Appellants' company
to make this Affidavit.

2. On the 13th day of November, 1976 this
Honourable Court by a majority decision gave final
judgment dismissing the Appellants' appeal.

3. The Appellants are desirous of appealing to
His Majesty the Yang di Pertuan Agong against the
said judgment.

30 4. The matter in dispute involves, directly and
indirectly, a question respecting property or some
civil right of the value of \$25,000.00 or upwards.

In the Federal Court

No. 15
Affidavit of
Chue Jong Keow
sworn, 16th
December, 1976.
(cont'd)

Alternatively, the case is from its nature a fit one for appeal.

5. I am advised and verily believed that the decision of the Federal Court relates to the effect of a provision of the Constitution, namely, Article 153 and is, in its nature a fit matter for appeal.

6. I, on behalf of the Appellants shall be pleased to provide security in such sum not exceeding \$5,000.00 as to this Honourable Court may appear just and to comply with such other conditions as this Honourable Court may be pleased to impose.

10

7. Wherefore, I pray that this Honourable Court may be pleased to make an order in terms of the motion filed herein.

AFFIRMED at Kuala Lumpur }
this 16th day of December, } (sd) Chue Jong Keow
1976 at 4.30 p.m. }

Before me, Chye Kool Tet

(sd) ..CHYE KOOL TET.....

20

Commissioner for Oaths,
Kuala Lumpur.

I hereby certify that the above affidavit was read, translated and explained in my presence to the deponent who seemed perfectly to understand it, declared to me that he did understand it and made his signature in my presence.

(sd) ..CHYE KOOL TET.....

Commissioner for Oaths.
Kuala Lumpur.

30

This Affidavit is filed by Messrs. Dr. Stephen Goh & Yussef Ahmad, Solicitors for the Appellants abovenamed whose address for service is at 3rd Floor, UMBC Building, No. 42, Jalan Tun Perak, Kuala Lumpur.

NOTICE OF MOTION FOR CONDITIONAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG di-PERTUAN AGUNG

No. 16
Notice of Motion for Conditional Leave to Appeal to His Majesty Yang di-Pertuan Agung. 20th December, 1976.

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

10 Station Hotels Berhad Appellants

- and -

Malayan Railway Administration Respondents

(In the matter of Civil Suit No. 586 of 1975 in the High Court in Malaya at Kuala Lumpur)

Between :

Malayan Railway Administration Plaintiffs

- and -

Station Hotels Berhad Defendants

NOTICE OF MOTION

20 TAKE NOTICE that the Court will be moved on Monday the 10th day of January, 1977 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Stephen Goh of Counsel for the appellants for an order that conditional leave be granted to the appellants to appeal to His Majesty the Yang di Pertuan Agung against the whole of the judgment and order of the Federal Court, Malaysia given on the 13th day of November, 1976 dismissing with costs the appellants' appeal to the Federal Court against the decision of the Honourable Mr. Justice Chang Min Tat given at Kuala Lumpur High Court on the 3rd day of May, 30 1976 and for an order granting stay of execution pending the appeal and for such further or other order as the nature of the case may require and or

In the Federal Court

as this Honourable Court may think fit.

No. 16
Notice of Motion
for Conditional
Leave to Appeal
to His Majesty
Yang Di Pertuan
Agung. 20th
December, 1976.
(cont'd)

(sd)
Solicitors for Appellants.

Dated at Kuala Lumpur this 20th day of
December, 1976.

(sd)
Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

This Notice of Motion is filed by Messrs. Dr.
Stephen Goh & Yussef Ahmed, Solicitors for the
Appellants abovenamed whose address for service is
at 3rd Floor, UMBC Building, No. 42, Jalan Tun
Perak, Kuala Lumpur.

10

This application will be supported by the
Affidavit of Chue Jong Keow affirmed on the 16th
day of December, 1976 and filed herein.

To: Messrs. Skrine & Co.,
Advocates & Solicitors,
3rd Floor, Straits Trading Building,
4 Leboh Pasar Besar,
Kuala Lumpur.

20

No. 17
Order for
Conditional
Leave to
Appeal. 10th
January 1977.

No. 17
ORDER FOR CONDITIONAL LEAVE TO APPEAL

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad

Appellants

30

- and -

Malayan Railway Administration

Respondents

(In the Matter of Civil Suit No. 586 of
1975 in the High Court in Malaya at Kuala
Lumpur

In the Federal
Court

Between :

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant)

No. 17.
Order for
Conditional
Leave to
Appeal. 10th
January 1977.
(cont'd)

10 CORAM: ALI, ACTING CHIEF JUSTICE, HIGH COURT,
MALAYA; ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA; RAJA AZLAR SRAH, JUDGE, FEDERAL
COURT, MALAYSIA.

IN OPEN COURT

THIS 10TH DAY OF JANUARY, 1977

O R D E R

20 UPON MOTION preferred unto Court this day by
Dr. Stephen Goh of Counsel for the Appellants and
Encik K. Thayalan of Counsel for the Respondents
AND UPON HEARING the Notice of Motion dated the 20th
day of December, 1976 and the Affidavit of Chue Jong
Keow affirmed on the 16th day of December, 1976 and
filed in support of the said Motion AND UPON HEARING
Counsel as aforesaid IT IS ORDERED that leave be
and is hereby granted to the Appellants to appeal to
His Majesty the Yang di Pertuan Agong against the
Order of the Federal Court of Malaysia given on the
13th day of November, 1976 upon the following
conditions:-

- 30 (i) that the Appellants abovenamed do within 3
(three) months from the date hereof enter
into good and sufficient security to the
satisfaction of the Chief Registrar, Federal
Court, Malaysia in the sum of \$5,000.00
(Ringgit Five thousand only) for the due
prosecution of the Appeal and the payment of
all costs as may become payable to the
Respondents in the event of the Appellants
not obtaining an Order granting them final
leave to appeal or of the Appeal being
40 dismissed for non-prosecution, or of His
Majesty the Yang di-Pertuan Agong ordering the

In the Federal Court

No. 17
Order for Conditional Leave to Appeal. 10th January 1977.
(cont'd)

Appellants abovenamed to pay to the Respondents the costs of the Appeal as the case may be; and

(ii) that the Appellants abovenamed do within the said period of 3 (three) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

AND IT IS ORDERED that all execution be and is hereby stayed pending the Appeal to His Majesty the Yang di-Pertuan Agong on condition that the Appellants continue to pay double rent to the Respondents subject to the Respondents' undertaking to refund the excess if the Appellants are successful in their Appeal AND IT IS LASTLY ORDERED that the costs of this motion be costs in the cause.

10

GIVEN under my hand and the seal of the Court this 10th day of January, 1977.

(sd)

Acting Chief Registrar,
Federal Court, Malaysia.

20

No. 18
Affidavit of Chua Jong Keow dated 9th April, 1977 (Appellant)

No. 18

AFFIDAVIT OF CHUA JONG KEOW (APPELLANT)

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad

Appellants

- and -

Malayan Railway Administration

Respondents

30

(In the Matter of Civil Suit No. 586 of 1975 in the High Court in Malaya at Kuala Lumpur

Between :
Malayan Railway Administration Plaintiff
- and -
Station Hotels Berhad Defendant)

In the Federal
Court
No. 18
Affidavit of
Chua Jong Keow
dated 9th
April, 1977
(Appellant)
(cont'd)

A F F I D A V I T

I, CHUA JONG KEOW, of full age of No. 26,
Road 1/4, Petaling Jaya, affirm and say as follows:-

10 1. I am the Manager of the Appellants' company
and am duly authorised by the Appellants' company
to make this Affidavit.

2. I crave leave to refer to this Honourable
Court to the Order dated 10th January, 1977 granting
the Appellants abovenamed leave to appeal to His
Majesty the Yang Di-pertuan Agong subject to the
following conditions:-

20 (a) that the Appellants abovenamed do within 3
(three) months from the date hereof enter
into good and sufficient security to the
satisfaction of the Chief Registrar, Federal
Court, Malaysia in the sum of \$5,000.00
(Ringgit Five thousand only) for the due
prosecution of the Appeal and the payment of
all costs as may become payable to the
Respondents in the event of the Appellants not
obtaining an Order granting them final leave
to appeal or of the Appeal being dismissed
for non-prosecution, or of His Majesty the
Yang Di-pertuan Agong ordering the Appellants
abovenamed to pay to the Respondents the
30 costs of the Appeal as the case may be; and

(b) that the Appellants abovenamed do within the
said period of 3 (three) months from the date
hereof take the necessary steps for the
purpose of procuring the preparation of the
Records and for the despatch thereof to
England.

40 3. The Appellants abovenamed has complied with all
the conditions of the said Order and the said
Appellants therefore pray that final leave be
granted to them to appeal to His Majesty the Yang
Di-pertuan Agong.

In the Federal Court
No. 18
Affidavit of
Chua Jong Keow
dated 9th
April, 1977
(Appellant)
(cont'd)

AFFIRMED at Kuala Lumpur)
this 9th day of April)
1977 at 10.00 a.m.) Sgd.

Before me,

Sgd.

Commissioner for Oaths.

This Affidavit is filed by Messrs. Dr. Stephen Goh & Yussef Ahmad, Solicitors for the Appellants abovenamed whose address for service is at 3rd Floor, UMBC Building, No. 42, Jalan Tun Perak, Kuala Lumpur.

10

No. 19
Notice of
Motion for
Final Leave to
Appeal to His
Majesty the
Yang Di Pertuan
Agong
9th April 1977.

No. 19

NOTICE OF MOTION FOR FINAL LEAVE TO
APPEAL TO HIS MAJESTY THE YANG DI
PERTUAN AGONG

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad

Appellants

20

- and -

Malayan Railway Administration

Respondents

(In the Matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur

Between :

Malayan Railway Administration

Plaintiff

- and -

Station Hotels Berhad

Defendant)

NOTICE OF MOTION

In the Federal
Court

10 TAKE NOTICE that this Honourable Court will be moved on Monday the 23rd day of May, 1977 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the Appellants abovenamed for an Order that final leave be granted to the Appellants above-named to appeal to His Majesty the Yang Di-Pertuan Agong against the whole of the Judgment and Order of the Federal Court of Malaysia given on the 13th day of November, 1976.

No. 19
Notice of
Motion for
Final Leave to
Appeal to His
Majesty the
Yang Di Pertuan
Agong
9th April 1977.
(cont'd)

Sgd.
Appellants' Solicitors.

Dated at Kuala Lumpur this 26th day of April, 1977.

Sgd.
Chief Registrar,
Federal Court, Malaysia.

20 This Notice of Motion is taken out by Messrs. Dr. Stephen Goh & Yussof Ahmad, Solicitors for the Appellants abovenamed whose address for service is at 3rd Floor, UMBC Building, No. 42, Jalan Tun Perak, Kuala Lumpur.

The Affidavit of Chua Jong Keow affirmed on the 9th day of April, 1977 and filed herein will be read in support of this application.

This Notice of Motion will be served on:-

30 Messrs. Skrine & Co.,
Advocates & Solicitors,
3rd Floor,
Straits Trading Building,
4, Leboh Pasar Besar,
KUALA LUMPUR.

Filed at Kuala Lumpur this 9th day of April 1977.

Sgd.
Acting Chief Registrar,
Federal Court, Malaysia.

In the Federal
Court

No. 20

No. 20
Order allowing
Final Leave to
Appeal to His
Majesty The
Yang di-Pertuan
Agong.
23rd May 1977.

ORDER ALLOWING FINAL LEAVE TO APPEAL
TO HIS MAJESTY THE YANG DI-PERTUAN
AGONG

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 60 OF 1976

B E T W E E N :

Station Hotels Berhad Appellants 10

- and -

Malayan Railway Administration Respondents

(In the Matter of Civil Suit No. 586 of 1975
in the High Court in Malaya at Kuala Lumpur

Between :

Malayan Railway Administration Plaintiff

- and -

Station Hotels Berhad Defendant)

CORAM: GILL, CHIEF JUSTICE, HIGH COURT, MALAYA;
ONG HOCK SIM. JUDGE, FEDERAL COURT, MALAYSIA; 20
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 23RD DAY OF MEI. 1977

O R D E R

UPON MOTION preferred unto Court this day by
Encik Yussof Ahmad of Counsel for the Appellants
and Encik K. Thayalan of Counsel for the
Respondents AND UPON READING the Notice of Motion
dated 26th April, 1977 and the Affidavit of Chua
Jong Keow affirmed on the 9th day of April, 1977
and filed in support of the said Motion AND UPON
HEARING Counsel as aforesaid IT IS ORDERED that

30

PART II

E X H I B I T S

EXHIBITS

Z.1. Principal Agreement

Z.1.
Principal
Agreement
28th December
1968.

MALAYAN RAILWAY

T.M. 354.3/70-2
G.M.R. 354.3/C7-1.

TRAFFIC AGREEMENT NO. 20/68

THIS AGREEMENT made this 28th day of December 1968, between the Malayan Railway Administration, a corporation sole by virtue of Section 4(i) of the Railway Ordinance, 1948 (hereinafter referred to as "the Railway Administration") of the one part and the Station Hotels Limited, Kuala Lumpur, (hereinafter called "the Lessee" which expression shall where the context so requires or admits include its successors or assigns) of the other part 10

1. The Railway Administration agrees to let and the Lessee agrees to take from the first day of January, 1968, inclusive all those the rooms, inside and outside stairs, and the lift on the ground first and mezzanine floors of the Railway Station Buildings at Kuala Lumpur which said rooms, stairs and lift are for the purposes of identification only shown in red on plan No. AB/1003 attached hereto. 20

2. This agreement shall be for a period of five years only from the said first day of January 1968, at a rent of dollars sixty-six thousand only (\$66,000) per annum to be paid by equal monthly payments of dollars five thousand five hundred only (\$5,500) in advance on the first day of each month during the said period of five years, the first of such payments having fallen due on the said first day of January, 1968. 30

3. The Lessee for itself and its successors and assigns hereby covenants with the Railway Administration as follows:-

(i) To deposit with the Railway Administration in cash or in bonds an amount equivalent to three months' rent as a guarantee of good faith in the observance of this agreement such money or bonds to be deposited in a bank with interest payable to the Lessee.. 40

(ii) To pay the rent hereby reserved at the times and in the manner aforesaid.

(iii) To bear, pay and discharge all existing and future rates, taxes, assessments, duties, licence fees, Municipal charges, electric light charges and outgoings whatsoever imposed or charged upon the hereby demised premises or upon the owner or occupier in respect thereof or payable by either in respect thereof.

EXHIBITS
Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

- 10 (iv) To keep the said rooms, stairs and lifts together with the doors, windows, fittings and landlords' fixtures thereof in good and tenable repair and condition (fair wear and tear and damage by fire and tempest excepted) and to prohibit the use of any naked lights, wood, charcoal, coal or oil fires in any part of the building except in the kitchen and staff cook house on the ground floor, and shall not permit any interference with the electric wiring or fittings.
- 20 (v) To operate, maintain and repair at the Lessee's expense the air-conditioning equipment installed by the Lessee in rooms Nos. 34, 35, 36, 37, 38, 39, 40 and 41.
- 30 (vi) To replace any of the furniture, linen, crockery, glass, cutlery and similar equipment at present in the demised premises which may during the said terms become unfit for the purpose for which the same are to be used by substituting therefor other furniture, linen, crockery, glass, cutlery and similar equipment of a like nature and value which the Lessee expressly covenants shall be obtained either by ordering the same exclusively from the Railway Administration and which the Railway Administration expressly agree to provide at cost price, or from other sources with the approval of the Railway Administration.
- 40 (vii) Not to make or permit to be made any alterations in the construction or the arrangements of the demised premises without the previous consent in writing of the Railway Administration nor without the like consent to cut, alter or injure any of the walls, timbers or floors of the said premises.
- (viii) To permit the Railway Administration and its agents with or without workmen or others at all reasonable times to enter upon the demised

EXHIBITS

Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

- premises and to view the condition thereof and upon notice being given by the Railway Administration to repair in accordance therewith.
- (ix) To permit the Railway Administration and its agents together where necessary with workmen and appliances at all reasonable times to enter upon the demised premises to take inventories of the fixtures therein and to execute repairs on the adjoining premises belonging to the Railway Administration, the Railway Administration making good all damages occasioned to the Lessee by such last mentioned entry. 10
- (x) To use the said rooms, stairs and lift for the purposes of a Hotel with Rest Rooms, Restaurant and bars only and for no other purposes and not to do or suffer to be done upon the demised premises anything which may be or may become a nuisance, or cause damage, annoyance or disturbance to the Railway Administration or its tenants or other neighbouring occupiers. 20
- (xi) To supply food and refreshment of good quality and approved brands.
- (xii) To sell liquor at or during hours authorised in writing by the Local Licensing Authority and conduct the business thereof in a lawful and orderly manner.
- (xiii) To keep the premises open, and render proper and similar services on all days of the week including Sundays and Public Holidays, and to adhere to such hours of business as may be approved from time to time by the Railway Administration. 30
- (xiv) So to manage and control the premises or to cause the same to be so managed and controlled that neither the Lessee nor other person or persons lawfully in occupation of the hereby demised premises or any part thereof shall do or suffer anything which may offend against any enactment or ordinance for the time being in force relating to public houses or hotels or restaurants or bars whereby the licences necessary for keeping open the demised premises as fully licensed hotel or restaurant or bar 40

for the sale and consumption of beer, wine and excisable liquors may be or become liable to be forfeited or the renewal thereof withheld.

EXHIBITS

Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

- 10 (xv) That the duties of the appointment of Resident Manager shall be carried out by the Lessee itself or by a person appointed with the approval of the Railway Administration.
- (xvi) To keep and maintain account books and records of the business in English and to permit the Railway Administration access to such books and records at any time.
- (xvii) Not to permit any person to stay at the hotel and/or Rest Rooms upon the demised premises for any period exceeding twenty-one days save with the written permission of the Traffic Manager, Malayan Railway, first obtained.
- 20 (xviii) To make charges for board, residence and meals, and use of changing rooms at rates not exceeding those as approved from time to time by the General Manager, Malayan Railway.
- (xix) Not to assign, underlet or part with the possession of the hereby demised premises or any part thereof without first obtaining the written consent of the Railway Administration such consent however not to be unreasonably withheld in the case of a respectable and responsible person.
- 30 (xx) Not to give any bill of sale on any of the goods or effects for the time being in or about the hereby demised premises without the written consent of the Railway Administration.
- (xxi) Upon the determination of this agreement as in the manner herein provided:-
- 40 (a) To yield up the demised premises and additions thereto with the fittings and landlords' fixtures or the fittings and landlords' fixtures substituted therefor in good and tenantable repair and condition.
- (b) Not to remove any of the furniture, linen, crockery, glass, cutlery and similar

EXHIBITS

Z.l.
Principal
Agreement
28th December
1968.
(cont'd)

equipment that has been obtained for use in the demised premises except with the approval in writing of the Railway administration.

- (c) To sell all such furniture, linen, crockery, glass, cutlery and similar equipment in and upon the said demised premises to the Railway Administration at a valuation to be made by a properly qualified appraiser to be appointed by the parties hereto or if the parties are unable to agree by the Minister of Transport, Malaysia. Cost of valuation to be borne equally by the parties hereto. 10
- 4.(a) The Lessee, shall as a condition precedent to the commencement of this agreement, forthwith take out at its own expense with an Insurance Company (to be approved by the Railway Administration in writing) a policy or policies of insurance indemnifying the Lessee and the Railway Administration (including for this purpose every Government Officer and department thereof) from all liabilities arising out of claims by any and every workman employed by the Lessee in or about the demised premises for payment of compensation under or by virtue of the Workmen's Compensation Enactment, and from all costs and expenses incidental or consequential thereto. 20
- (b) The Lessee shall from the commencement of this agreement take out at its own expense with an Insurance Company (to be approved by the Railway Administration in writing) a policy or policies of insurance against risk by fire to the furniture, linen, crockery, glass, cutlery and similar equipment in and upon the demised premises the value of such amount to be insured to be mutually agreed by the parties hereto. 30
- (c) Such policy or policies so taken out shall be deposited with the Railway Administration and the Lessee shall maintain them in full force and effect by payment of all premiums from time to time on the first day on which the same ought to be paid and until the termination of the term hereby created and shall deposit such receipts with the Railway Administration. 40

- 10 (d) Should any default be made by the Lessee in complying with the terms of these conditions it shall be permissible for the Railway Administration (in addition to any other remedy for breach of a condition under this agreement) to withhold all cash and/or bonds deposited with the Railway Administration by the Lessee under this agreement and out of such moneys so withheld to satisfy any claims for compensation by workmen that would have been borne by an Insurance Company had the Lessee not made default in maintaining a policy of insurance or to pay such premium as have become due and have remained unpaid for seven days.
- 20 (e) Provided always that if any default has been made by the Lessee as aforesaid and the Railway Administration is satisfied that these conditions have been subsequently complied with by the Lessee within seven days of such breach this agreement shall be in full force and effect as if such breach had not been made.
5. The Railway Administration hereby covenants with the Lessee:-
- 30 (i) That the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on its part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Railway Administration or any person rightfully claiming under or in trust for it.
- (ii) To keep the exterior and structure of the demised premises and of all additions thereto (except the glass) and the main drains and boundary walls thereof in good and tenantable repair and condition.
- 40 (iii) Upon the determination of the agreement as in the manner herein provided to buy all the furniture, linen, crockery, glass, cutlery and similar equipment purchased with the written approval of the Railway Administration, in and upon the demised premises at a valuation to be made by a properly qualified appraiser to be appointed by the parties hereto or if the parties are unable to agree by the Minister of Transport, Malaysia. Cost of valuation to be borne equally by parties hereto.

EXHIBITS

Z.l.
Principal
Agreement
28th December
1968.
(cont'd)

6. PROVIDED ALWAYS and it is expressly agreed and declared between the parties hereto as follows:-

- (i) Unless otherwise mutually agreed between the parties to this agreement to grant a new lease of the premises hereby demised, whether on the same terms and conditions or otherwise, this agreement will automatically expire at the end of the fifth year from the commencement of this agreement.
- (ii) The Lessee shall pay an increase in the rental, to be mutually agreed upon, in respect of any capital improvements to the demised premises, carried out by the Railway Administration. 10
- (iii) If the rent hereby reserved, or any part thereof shall at any time be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any agreement or covenant on the Lessee's part herein contained shall not be carried out or performed or observed or if any event shall happen by reason whereof the renewal of any licence of the premises shall be refused or prejudiced in consequence of the acts or omissions of any occupier for the time being of the premises or if the Lessee or other person in whom for the time being the term hereby created shall be vested shall become insolvent or become disqualified for holding the licences of the premises or if the Lessee or the Assignees of the term being a Company shall go into liquidation either compulsorily or voluntarily (except for the purpose of reconstruction or amalgamation) then and in each and any of the said cases it shall be lawful for the Railway Administration at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely cease and determine but without prejudice to the right of action of the Railway Administration in respect of any breach of the Lessee's agreements or covenants herein contained. 20 30 40
- (iv) Should the Lessee at any time be in arrears in the payment of the rent agreed or in any other payments whatsoever to the Railway Administration it shall be permissible for the Railway Administration (in addition to

any other remedy for breach of a condition under this agreement) to withhold all cash and/or bonds deposited with the Railway Administration under this Agreement and out of such moneys so withheld to deduct such amounts as may be due to the Railway Administration.

EXHIBITS
Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

10 (v) If the Railway Administration shall at any time during the said period of lease desire to terminate this lease the Railway Administration may give the Lessee three months' notice in writing to that effect and the Lessee shall thereupon cease to occupy the said Hotel and Restaurant at the expiration of the notice and shall have no claim for any compensation.

20 (vi) If the Lessee shall at any time desire to terminate this lease the Lessee may give three months' notice in writing to the Railway Administration and this lease shall be terminated from the expiration of such notice.

In witness whereof the parties hereto have caused the respective corporate and common seals to hereunto affixed the day and year first hereinbefore written.

The Corporate Seal of the)
Malayan Railway Administra-)
tion was hereto affixed in)
the presence of :-)

30 Sgd.
.....
General Manager,
Malayan Railway

The Common Seal of the)
Station Hotels Limited was)
hereunto affixed in the)
presence of :-)

Sgd.
.....
Director

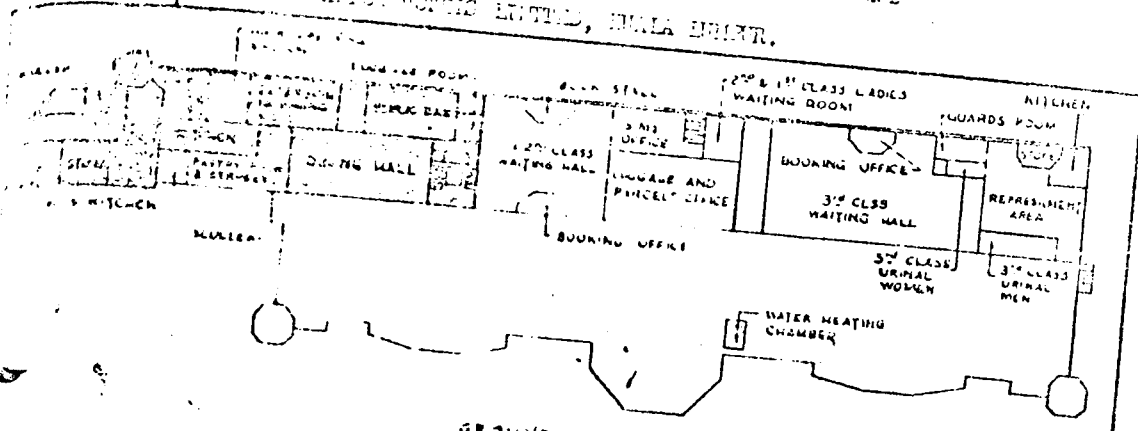
40 Sgd.
.....
Secretary

EXHIBITS

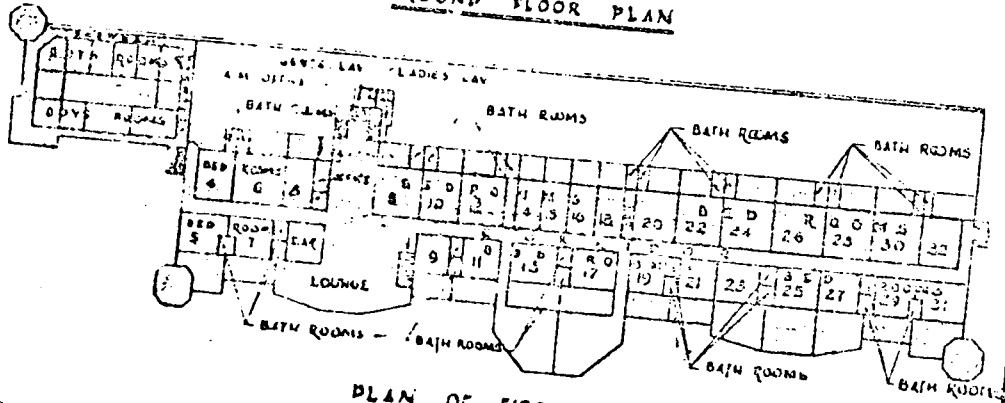
Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

**KUALA LUMPUR
STATION HOTEL**

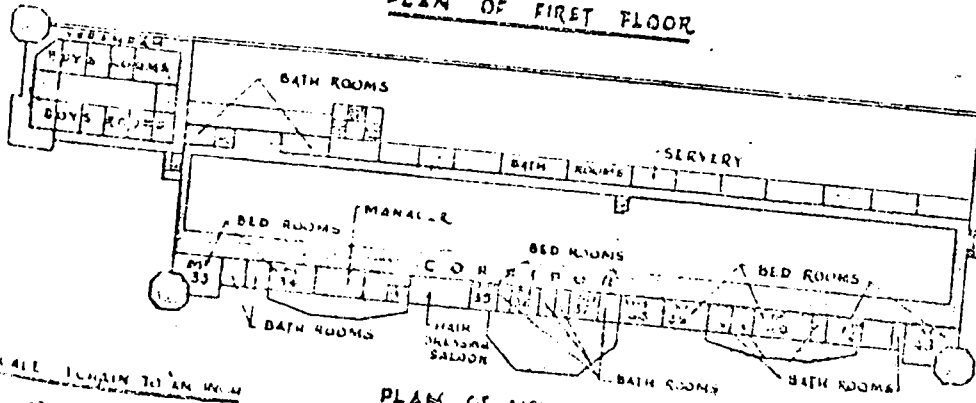
THIS IS THE PLAN REFERRED TO IN AGREEMENT No. 20/68
BETWEEN THE MALAYSIAN RAILWAY ADMINISTRATION AND
THE HOTEL MANAGEMENT, KUALA LUMPUR.



GROUND FLOOR PLAN



PLAN OF FIRST FLOOR



PLAN OF MEZZANINE FLOOR

374 5/60-1		O.H.	OF SALIN. CLEN
AB/1003		FOR D. J. FITZ GIBBON.	

MALAYAN RAILWAY

EXHIBITS

FIRST ADDENDUM TO TRAFFIC AGREEMENT NO.
20/68

Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

10 WHEREAS AN AGREEMENT dated 28th December, 1968 (hereinafter referred to as "the Principal Agreement") was entered into by and between the Malayan Railway Administration, a corporation sole by virtue of Section 4(i) of the Railway Ordinance 1948 (hereinafter referred to as "the Railway Administration") of the one part and the Station Hotels, Ltd., Kuala Lumpur (hereinafter referred to as "the Lessee" which expression shall where the context so requires or admits include his successors and assigns) of the other part.

AND WHEREAS it is now desired to vary the terms of the Principal Agreement.

20 NOW IT IS AGREED by and between the parties hereto that Clause 4(a), (d) and (e) shall be deleted and the following Clause substituted therefor with effect from 1st January, 1969:-

30 "4.(a) The Lessee shall, as a condition precedent to the commencement of any works under this Agreement, forthwith take out at his own expense with an Insurance Company (to be approved by the Railway Administration in writing) a policy or policies of insurance indemnifying the Lessee and the Railway Administration (including for this purpose every Government Officer and department thereof) from all liabilities arising out of claims by any and every workman employed in the performance of this Agreement for payment of compensation under or by virtue of the Workmen's Compensation Ordinance, and from all costs and expenses incidental or consequential thereto and also indemnifying the Railway Administration (and giving it the right to claim the indemnity directly) from all liabilities arising out of claims in respect of personal injury or death to workmen or other employees of the Lessee and from all costs and expenses incidental or consequential thereto. Such policy or policies so taken out shall be deposited with the Railway Administration and the Lessee shall maintain it or them in full force and effect by payment of all premiums from time to time on the first day on which

EXHIBITS

Z.1.
Principal
Agreement
28th December
1968.
(cont'd)

the same ought to be paid until the termination of this Agreement, and upon demand the Lessee shall produce to the Railway Administration the last receipt for payment of such premiums.

(d) Should any default be made by the Lessee in complying with the terms of this condition it shall be permissible for the Railway Administration (in addition to any other remedy for breach of a condition under this Agreement) to withhold all payments otherwise due to the Lessee under this Agreement and out of such moneys so withheld to satisfy any claims that would have been borne by an Insurance Company had the Lessee not made default in maintaining a policy of insurance or to pay such premiums as have become due and have remained unpaid from seven days.

10

(e) Should the Lessee fail to take out a policy as aforesaid or fail to maintain it or renew it the Railway Administration, if it thinks fit, do so and the Lessee shall be liable to reimburse the Railway Administration for the costs thereof."

20

AS VARIED AS AFORESAID the Principal Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have caused the respective corporate and common seals to hereunto affixed on this 25th day of September 1969.

30

The Corporate Seal of the Malayan)
Railway Administration was hereto)
affixed in the presence of:-)

Sgd.
.....
General Manager, Malayan Railway.

The Common Seal of the Station)
Hotels Limited was hereunto)
affixed in the presence of:-)

Sgd.
.....
Director

40

Sgd.
.....
Secretary

Z.2.

SUPPLEMENTARY AGREEMENT
SECOND ADDENDUM

MALAYAN RAILWAY

SECOND ADDENDUM TO TRAFFIC AGREEMENT NO. 20/68

EXHIBITS

Z.2.
Supplementary
Agreement
Second
Addendum
5th December,
1973.

10 WHEREAS AN AGREEMENT DATED 28th day of
December 1968 (hereinafter referred to as "the
Principal Agreement") was entered into by and
between the Malayan Railway Administration, a
corporation sole by virtue of Section 4(i) of the
Railway Ordinance 1948 (hereinafter referred to as
"the Railway Administration") of the one part and
the Station Hotels Ltd. Kuala Lumpur (hereinafter
referred to as "the Lessee", which expression shall
where the context so requires or admits include
his successors and assigns) of the other part to
lease unto the Lessee all those rooms, inside and
outside stairs, and the lift on the ground, first
and mezzanine floors of the Railway Station Building
20 at Kuala Lumpur shown in red on plan No. AB/1003
attached to the Principal Agreement.

AND WHEREAS the Principal Agreement was varied
by the First Addendum dated the 25th day of
September, 1969, hereinafter referred to as "the
First Addendum."

30 AND WHEREAS the Railway Administration has
agreed to grant an extension of one year from the
1st day of January, 1973 to the Lessee upon the
same terms and conditions as stipulated in the
Principal Agreement and the First Addendum.

NOW IT IS HEREBY AGREED by and between the
Railway Administration and the Lessee that the
Principal Agreement and the First Addendum shall
remain in full force and effect from the 1st day of
January 1973 inclusive.

IN WITNESS WHEREOF the parties have hereunto
set their hands on this 5th day of December, 1973.

EXHIBITS

Z.2.
Supplementary
Agreement
Second Addendum
5th December,
1973.
(cont'd)

Signed by the General)
Manager Malayan Railway,)
on behalf of the Malayan)
Railway Administration in)
the presence of:-)

Sgd.
.....

PEGAWAI PENTADBIR.

The Common Seal of)
Station Hotels Berhad)
Ltd. hereunto affixed in)
the presence of :-)

10

Sgd.
.....

Director

Sgd.
.....

Secretary

Z.3.
Further
Supplementary
Agreement
Third
Addendum
16th March 1974.

Z.3.

FURTHER SUPPLEMENTARY AGREEMENT
THIRD ADDENDUM

MALAYAN RAILWAY

THIRD ADDENDUM TO TRAFFIC AGREEMENT NO.
20/68

20

WHEREAS AN AGREEMENT DATED 28th day of
December 1968 (hereinafter referred to as "the
Principal Agreement") was entered into by and
between the Malayan Railway Administration, a
corporation sole by virtue of Section 4(i) of the
Railway Ordinance 1948 (hereinafter referred to
as "the Railway Administration") of the one part
and the Station Hotels Ltd. Kuala Lumpur
(hereinafter referred to as "the Lessee", which
expression shall where the context so requires or
admits include his successors and assigns) of the
other part to lease unto the Lessee all those

30

rooms, inside and outside stairs, and the lift on the ground, first and mezzanine floors of the Railway Station at Kuala Lumpur shown in red on plan No. AB/1003 attached to the Principal Agreement.

EXHIBITS
Z.3.
Further
Supplementary
Agreement
Third
Addendum
16th March 1974.
(cont'd)

10

AND WHEREAS the Principal Agreement was varied by the First Addendum dated the 25th day of September, 1969, and by the Second Addendum dated the 5th day of December, 1973 hereinafter referred to as "the First Addendum" and "the Second Addendum" respectively.

20

AND WHEREAS the Railway Administration has agreed to grant an extension of six months from the 1st day of January, 1974 to the Lessee in consideration for the payment of rent of Dollars Two Thousand (\$2000/-) only per mensem payable in advance on the first day of each month and upon the same terms and conditions as stipulated in the Principal Agreement, the First Addendum and the Second Addendum.

NOW IT IS HEREBY AGREED by and between the Railway Administration and the Lessee that the Principal Agreement the First Addendum and the Second Addendum shall remain in full force and effect from the 1st day of January 1974 until the expiration of the tenancy on the 30th day of June, 1974.

IN WITNESS WHEREOF the parties have hereunto set their hands on this 16th day of March, 1974.

30

Signed by the General Manager)
Malayan Railway, on behalf of the) Sgd.
Malayan Railway Administration)
in the presence of:-) PENGURUS BESAR

Sgd.
PEGAWAI PENTADBIR.

The Common Seal of Station Hotels)
Berhad was hereunto affixed in)
the presence of:-)

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Sgd.
Director
Sgd.
Secretary

EXHIBITS

Letter to
Respondent
to Appellant
10th May 1974.

Z.4.

Letter Respondent to Appellant

1101 dlm. PBR.354.3/67-1 Jld. VI.

Dengan Tangan.

Pemajak,
Hotel Setesyen Berhad,
c/o Setesyen Keretapi,
Kuala Lumpur.

Tuan,

Setesyen Hotel, Kuala Lumpur

10

Sebagaimann yang disetujui didalam Addendum Ketiga kepada Perjanjian Terafik No. 20/68 yang diselenggarakan diantara tuan dan Pertadbiran ini, maka dengan ini saya memberitahu tuan supaya mengosongkan hotel yang tersebut illegible 30.8.74.

2. Tuan adalah dikehendaki juga bagi menjelaskan segala pembayaran sewa dan lain-lain bayaran sehingga 30hb Jun, 1974 ini.

3. Suka saya memaklumkan disini bahawa pihak UDA, 20
iaitu bakal pemajak Hotel tersebut, telah bersetuja akan mengambil pekerja-pekerja tuan bagi mengendalikan Hotel tersebut.

4. Sukacita saya sekiranya dapat tuan mengakui penerimaan surat notis ini dan kembalikan Salinan Surat Perjanjian No. 20/68 dan addendum-addendumnya ke pejabat ini untuk dibatalkan.

Yang benar,

(sgd.)

(Abdul Malek bin Abdul Rahman) 30
bp. Pengurus Besar.

Sal: Shook Lin & Bok,
Peti Surat 766,
Bangunan Lee Wah Bank,
Kuala Lumpur 01-02.

s.s. KA - Fail KAE.22/8/19-1.
Untuk makluman tuan.

bp. Pengurus Besar.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA HOLDEE
AT KUALA LUMPUR
(Appellate Jurisdiction)

B E T W E E N :

STATION HOTELS BERHAD Appellants
(Defendants)

- and -

MALAYAN RAILWAY Respondents
ADMINISTRATION (Plaintiffs)

RECORD OF PROCEEDINGS

Turner Peacock,
1 Raymond Buildings,
Gray's Inn,
London WC1R 5BJ.

Solicitors for the Appellants

Stephenson Harwood,
Saddlers' Hall,
Gutter Lane,
London EC2V 6BS.

Solicitors for the Respondents