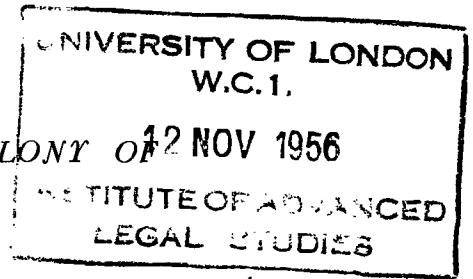


In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE.



33602

Civil Appeal No. 8 of 1952.

Suit No. 784 of 1950.

Between GUAN SENG KEE LIMITED (Plaintiffs) Appellants

and

BUAN LEE SENG LIMITED (Defendants) Respondents.

CASE FOR THE RESPONDENTS.

1. This is an appeal from a Judgment of the Court of Appeal of the Colony of Singapore dated the 15th July 1952 dismissing an appeal by the Appellants from a Judgment of Mr. Justice Rogers dated the 8th March 1952 in favour of the Respondents on the Appellants' claim for the recovery of possession of the premises known as No. 7 Read Street, Singapore, and for mesne profits. Record p. 8. Record p. 1.

2. The question to be determined upon this appeal is whether the learned trial Judge and the Court of Appeal were right in their conclusion that a sub-tenant can rely upon the provisions of the Control of Rent Ordinance, 1947, in an action for possession commenced against him by the head landlord after the mesne landlord's tenancy has been determined by a notice to quit.

3. The facts of the case appear in brief from the Judgment of the learned trial Judge:—

“ On the 2nd June 1950 the Plaintiffs (the Appellants) purchased from the concern known as United Engineers Ltd. the Record p. 1. I. 12.

RESPONDENTS CASE

premises No. 7 Read Street, of which the tenants were at that time Messrs. Harper Gilfillan & Co. Ltd., who held a monthly tenancy. On the 8th July 1950 the solicitors who were then acting for the Plaintiffs (the Appellants) served on Messrs. Harper Gilfillan & Co. Ltd. a Notice to Quit to take effect on 31st August 1950, and on that latter date Messrs. Harper Gilfillan wrote to the Plaintiffs' (the Appellants') solicitors confirming that they were giving up their tenancy forthwith. Meantime Messrs. Harper Gilfillan had sublet the said premises to the present Defendants (the Respondents) as far back at the 1st January 1947. For the purpose of this case there was no prohibition against subletting. The Defendants (the Respondents) have been and still are in possession of the premises as from the date of the lease."

4. The Appellants commenced this action by a writ of summons dated the 13th September 1950. This writ and the subsequent pleadings have been omitted from the Record by the consent of the parties.

Record p. 1.
5. The action came on for trial before Mr. Justice Rogers who on the 8th March 1952 gave judgment for the Respondents. The learned trial Judge came to the conclusion that the Respondents were tenants within the meaning of the Control of Rent Ordinance, 1947, and that as such they were entitled to the protection of section 14 of that Ordinance. During the course of his judgment Mr. Justice Rogers said:—

Record p. 2.
f. 29
" I further hold that when the interest of Messrs. Harper Gilfillan ceased as from 31st August 1950, their lawful subtenants, the present Defendants (the Respondents) began to hold as tenants immediately from the head landlords. This being so, the Plaintiffs are unable to bring themselves under Exception 14 (1) (i), as their new tenants are in possession, and I can find no other facts present which would justify me in holding that the Defendants (the Respondents) were disentitled to the protection of the Section as from the 31st August 1950."

6. On the 20th March 1952 the Appellants gave Notice of Appeal to the Court of Appeal against the said judgment.

Record p. 6.
7. The said appeal was heard by Murray-Aynsley C.J., Mathew C.J. and Brown J. and on the 15th July 1952 the Court of Appeal delivered reserved judgments unanimously dismissing the appeal with costs.

8. Three principal grounds of argument were adduced by the Appellants in support of their appeal to the Court of Appeal:—

(a) That section 14 (1) of the Control of Rent Ordinance, 1947, did not protect the Respondents because there was no

relationship of landlord and tenant between the Appellants and the Respondents.

- A (b) That Section 15 of the Control of Rent Ordinance, 1947, did not protect the Respondents because that section was limited to cases where an order for possession had been made against the mesne tenants.
- B (c) That the Appellants were entitled to possession against Messrs. Harper Gilfillan & Co. Ltd. under section 14 (1) (i) of the Control of Rent Ordinance, 1947, on the ground that the latter Company were not in occupation of the premises, and that the decision in *Enniskillen Urban District Council v. Bartley* (1947) N.I. 177 to the effect that if a ground for possession exists against a tenant it exists against a sub-tenant also was applicable to the Colony.
- C 9. The Court of Appeal rejected these arguments and held that the Respondents were protected by the Control of Rent Ordinance, 1947.
- D 10. The following submissions are made in support of the Respondents' contention that the decisions of the learned trial Judge and of the Court of Appeal that they are protected by the Control of Rent Ordinance, 1947, were well founded in fact and in law.
- E (a) That as from the 1st September 1950 the Respondents became statutory tenants of the premises by reason of the provisions of section 16 (a) of the Control of Rent Ordinance, 1947, and that thereafter they held the premises of the Appellants in accordance with section 17 of the Control of Rent Ordinance, 1947.
- F (b) That the premises are comprised in a tenancy and that the Appellants can only obtain possession of them on one of the grounds set out in section 14 (1) of the Control of Rent Ordinance, 1947
- G (c) That the Appellants are not entitled to recover possession of the premises under section 14 (1) (i) of the Control of Rent Ordinance, 1947, because the Respondents are in occupation of them.
- H (d) That, even assuming that the Appellants have a ground for possession against Messrs. Harper Gilfillan & Co. Ltd. under section 14 (1) (i) of the Control of Rent Ordinance, 1947, the Appellants are precluded by section 15 of that Ordinance from bringing an action against the Respondents direct. It is submitted that if an action had been brought, as it should have been brought, against Messrs. Harper

Gilfillan & Co. Ltd. the order for possession against that Company would have declared that it was not enforceable against the Respondents. It is further submitted that the Respondents would have been entitled to become statutory tenants under and by virtue of Section 15 (2) of the Control of Rent Ordinance, 1947, and that the Appellants are not entitled to deprive the Respondents of the protection of section 15 of that Ordinance by bringing an action against them instead of against Messrs. Harper Gilfillan & Co. Ltd. It is further submitted that the case of *Enniskillen U.D.C. v. Bartley* (1947) N.I. 177 (if rightly decided) has no application to the Colony of Singapore. A
B

11. The Respondents humbly submit that this Appeal should be dismissed for the following among other,

REASONS.

C

- (1) BECAUSE the Respondents are statutory tenants of the premises known as No. 7 Read Street, Singapore.
- (2) BECAUSE the Respondents are entitled to the protection of section 14 (1) of the Control of Rent Ordinance, 1947. D
- (3) BECAUSE the Respondents are entitled to the protection of section 15 of the Control of Rent Ordinance, 1947.
- (4) BECAUSE the case of *Enniskillen U.D.C. v Bartley* (if rightly decided) has no application to the Colony of Singapore. E
- (5) BECAUSE the judgments of Mr. Justice Rogers and the Court of Appeal of the Colony of Singapore were right and ought to be upheld.

P. COLIN DUNCAN.

In the Privy Council.

ON APPEAL

*FROM THE COURT OF APPEAL OF THE
COLONY OF SINGAPORE ISLAND OF
SINGAPORE.*

Between

GUAN SENG KEE LIMITED (Plaintiffs)
Appellants

and

BUAN LEE SENG LIMITED (Defendants)
Respondents.

Case for the Respondents.

SYDNEY REDFERN & CO.,
1, Gray's Inn Square,
Gray's Inn, W.C.1.