Privy Council Appeal No. 7 of 1979

Chin Ah Loy – – – – – – – – – *Appellant*

v.

Attorney-General – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL IN SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH OCTOBER 1980

Present at the Hearing:

LORD DIPLOCK
LORD SALMON
LORD KEITH OF KINKEL
LORD SCARMAN

[*Delivered by* LORD SALMON]

This appeal turns upon the true construction of a number of letters passing between the appellant and the Government of Singapore.

On 28th October 1971 the Government of Singapore through the Director of Civil Aviation (D.C.A.) at Singapore Airport invited tenders for duty-free shops including Airport Shop No. 22. The appellant tendered as rent for that shop $3,000 a month or 15·009% of the monthly sales. After a discussion between the appellant and the D.C.A. on 8th January 1972 the D.C.A. accepted the appellant's tender by a letter dated 11th January 1972. This letter contained two important paragraphs which read as follows:—

> paragraph 3. "Your tenancy will commence on the 1st February 1972 for a period of 3 years with an option for extension of 3 years subject to the D.C.A being satisfied with the quality of the services provided and prices charged."

The D.C.A. has never suggested that he was not satisfied with the quality of the services provided or prices charged by the appellant.

> paragraph 6. "Would you please let me have your written confirmation by the 20th January 1972 that you accept appointment as the operator and that you will operate the duty free shop for 3 years effective from the 1st February 1972."

On 3rd May more than two months after the appellant had been in occupation of the shop, the tenancy agreement (in quintuplicate) was sent to the appellant for his signature. Although clause 1 of the tenancy agreement recites that the tenant was to hold the shop for a term of

3 years, the appellant was, not unnaturally, astonished to find that, contrary to paragraph 3 of the D.C.A.'s letter of 11th January 1972, (*a*) clause 4(i) of the tenancy agreement provided that

> " Notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other three (3) months' previous notice in writing."

and (*b*) the tenancy agreement did not mention the appellant's option of an extension of 3 years from 1st February 1975.

It is hardly surprising that the appellant was in no hurry to sign the tenancy agreement as he had gone into possession of the shop and spent substantial sums of money in improving it on the faith of the terms which were set out and promised by the D.C.A. in his letter of 11th January 1972 but which appeared to be contrary to the agreement which the appellant was being asked to sign.

On 24th June 1972 the appellant's partner wrote to the D.C.A. as follows: —

> " Dear Sir
>
> Re: Tenancy Agreement
>
> Reference your letter dated 3.5.1972 enclosing the tenancy agreement for signature, we have to invite your attention to the following observations:
>
> (1) Clause 4(i) of the tenancy agreement:
> The effect of the clause is that we will only have a three months tenancy agreement although on the face of it, it is stated three years. With such a clause, we will not have the confidence to lavish money in promoting this business to our mutual benefits, and beautifying our shop, the object being to turn it into an airport show piece. We have the apprehension that we will not be able to enjoy a secured term of 3 years, and that others may reap the fruit of our labour.
>
> On this clause, we hope you would reconsider it. What we want is to have a secured term of 3 years provided we have not committed any serious breach of the tenancy agreement.
>
> . . . . . .
>
> (2) In your letter DCA/1/72 dated 11.1.1972, you have given us an option for extension of 3 years subject to certain conditions at the expiry of the present term. We do not, however, find this in the tenancy agreement. Would it be an oversight? Please advise.
>
> . . . . . "

This letter was replied to by a letter of 27th June on behalf of the D.C.A. which reads as follows: —

> " Dear Sir,
>
> Re: Tenancy Agreement
>
> Your minute of the 24th instant refers.
>
> We regret to advise that we are unable to reconsider Clause 4(i) of the Tenancy Agreement. Please note that this Clause is a standard one applicable and inserted in all our Agreements. However, you may be re-assured that if you observe carefully the rules and regulations of the Tenancy Agreement, your tenancy may be considered as secure for the period in question.
>
> The option for the extension of your tenancy as contained in my letter DCA/1/72 dated 11.1.72 is not repeated in the Agreement as this letter may be taken as a part of your Tenancy Agreement with us. . . ."

Their Lordships consider

(1) that the first paragraph of the letter of 27th June would be understood by any reasonable man as warranting that Clause 4(i) is inserted in all tenancy agreements as a standard form, but will be put into operation by the Government only if the tenant fails carefully to observe the rules and regulations of the tenancy agreement. It has never been suggested by the Government that the appellant ever did fail carefully to comply with these rules and regulations.

(2) that the second paragraph of the letter of 27th June warrants that the third paragraph of the D.C.A.'s letter of 11th January shall be treated as incorporated in the tenancy agreement. This means that the appellant would have the option of extending his tenancy for three years from 1st February 1975. No reasonable person in the appellant's position would understand this second paragraph as meaning that during the period of the three year extension the lease was subject to determination by the D.C.A. on three months' notice, irrespective of whether or not the appellant had carefully observed the rules and regulations of the tenancy agreement. Relying on those warranties contained in the letter of 27th June 1972 the appellant then signed the tenancy agreement.

On 30th October 1974 the appellant wrote to the D.C.A. concerning his option to extend his tenancy for three years from 1st February 1975 and asking for an early confirmation of this extension of the tenancy. The appellant received no reply to his letter of 30th October but he received a letter dated 18th January 1975 in the following terms:—

" Mr. Chin Ah Loy
Chin International
Duty Free Shop
Arrival Hall
Singapore Airport
Singapore 19

Dear Sir,

TERMINATION OF TENANCY

Your tenancy to operate Shop No. 22 in the Arrival Hall will expire on 31 Jan 75.

2. Please be reminded that you are required to vacate the premises and remove all your stocks from our building as early as possible by midnight 31 Jan 75.

Yours faithfully,

CHAN WAH YIAN
for DIRECTOR OF CIVIL AVIATION "

The appellant's solicitors answered this letter by a letter dated 25th January 1975 in which they asked to be informed why the D.C.A. had not confirmed the extension of the appellant's tenancy and the grounds for the D.C.A.'s refusal to extend the term if the D.C.A. was, in fact, refusing to do so.

On 31st January 1975, the Government answered the letter of 25th January 1975, as follows:—

". . . we confirm that the Government has granted to you an extension of the said Tenancy Agreement with effect from 1 February 1975 on the same terms and conditions as the said Tenancy Agreement.

Nevertheless we hereby give you 3 months' notice under clause 4(i) of the said Tenancy Agreement as extended hereunder to terminate your tenancy thereunder . . .

Please note that this notice expires on 30 April 1975 . . ."

The Government appears to have overlooked that one of the terms of the tenancy agreement was the warranty by the Government that it would not attempt to put clause 4(i) of the agreement into operation unless the tenant failed carefully to observe the rules and regulations of the agreement. Accordingly, in their Lordships' opinion, the appellant was wrongfully prevented by the Government from entering, after midnight on 30th April 1975, the shop which he had rented for a term which had been extended until 1st February 1978. On 3rd May 1975 the appellant's solicitors wrote a letter to the Attorney-General, paragraph 4 of which reads as follows: —

"Our client has built up his business at the Arrival Hall from scratch and he has spent more than $100,000/- in advertising and in promoting his business. Our client's tenancy has been terminated for no other reason other than to enable the Singapore Airport Duty-Free Emporium (Private) Limited to reap the fruits of our client's labour. The Singapore Airport Duty-Free Emporium (Private) Limited, if the corporate veil is lifted, is in truth and in fact the Government or the interests of the Government despite whatever name you may give to it."

The Attorney-General, in answering this letter, never denied what was said in the paragraph cited above.

The appellant then brought an action for damages for breach of contract against the Attorney-General who represented the Government. The case was tried by Choor Singh J. who, in effect, decided that, as the tenancy was renewed for 3 years from 1st February 1975 on the same terms as those which applied to the first 3 years, the Government could not terminate the second term of 3 years unless the appellant had failed to comply with the "rules and regulations" of the tenancy agreement; and there was no suggestion, let alone a spark of evidence, that the appellant had ever done so. The learned Judge found that the appellant was entitled to damages for the loss he suffered through the Government's wrongfully preventing him from operating his shop for 2 years and 9 months, i.e. from 1st May 1975 to 31st January 1978. The learned Judge assessed the damages as $604,890 and gave judgment for that amount.

The Attorney-General then appealed to the Court of Appeal which allowed the Appeal and the appellant now appeals to their Lordships' Board.

Their Lordships agree entirely with the judgment of the learned trial Judge. They have with respect come to the conclusion that the Court of Appeal has not given sufficient weight to paragraph 3 of the D.C.A.'s letter of 11th January 1972 addressed to the appellant.

The option promised in that paragraph (recited earlier in this judgment) is an option for an extension of the tenancy from 1st February 1975 for a period of 3 years and not three months as it would have been if clause 4(i) could be applied to cut down the option promised in the D.C.A.'s letter of 11th January and confirmed by his letter of 27th June.

Their Lordships therefore allow the appeal, set aside the order of the Court of Appeal and restore the judgment of Choor Singh J. The respondent must pay the costs of the appeal to the Court of Appeal and of this appeal.

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In the Privy Council

CHIN AH LOY

v.

ATTORNEY-GENERAL

DELIVERED BY
LORD SALMON

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