THE CONTROL OF RENT (EXEMPTION) NOTIFICATION AND "MEMBERS OF THE FAMILY" OF A TENANT

Chan Ah Yoke v. *Eastern Realty Co. Ltd.*[1]

WEE Chong Jin C.J. in a rare exercise of judicial discretion reserved an appeal in the case of *Chan Ah Yoke* v. *Eastern Realty Co. Ltd.* under Section 21(1), Supreme Court of Judicature Act[2] for a special sitting of a panel of 3 judges of the High Court, to decide "a point of law of public interest."[3] The decision to reserve this appeal for a special sitting is certainly to be welcomed, for the Control Of Rent (Exemption) Notification 1980,[4] (hereinafter referred to as "the Notification"), the subject of this appeal, despite (because of?) its brevity of language is fraught with ambiguities and difficulties.[5] Subordinate courts have taken differing views on the provisions of the Notification and there are several other pending cases, whose outcome would depend on the interpretation placed by the High Court.[6] Therefore, an authoritative ruling would, one hopes, help to nip these problems at their buds.

The Facts

The undisputed facts of the case are simple and ordinary enough. The premises in question were constructed before September 1947, which brought them within the purview of the Control of Rent Act[7] (hereinafter referred to as "the Act"). The appellant's husband was, for 28 years, the contractual tenant of the premises. His contractual tenancy was terminated by two notices to quit, one as early as May 1950 and the other in October 1976.[8] He thus became a statutory tenant[9] of the premises and died some two years after the second notice. The appellant, his widow remained in occupation of the premises and the respondent, the landlord, sought possession of the premises based on paragraph 2(a) of the Notification. Paragraph 2(a) reads:

> "2, The following domestic premises are exempted from the provisions of the Act:—
>
> (a) any domestic premises which (at any time after the commencement of this Notification) have not for any period been occupied by the owner or let to a tenant;"

1 [1983] 2 M.L.J. 100.
2 Cap. 15, Singapore Statutes, 1970 (Rev. Edn.).
3 See The Straits Times of 6th October 1982. The only other occasion in recent years where this discretion was exercised was in the case of *Mah Kah Yew* v. *Public Prosecutor* [1971] 1 M.L.J. 1.
4 No. S. 290/80.
5 Some of these problems have been pointed out by Lim-Lye Lin Heng in her commentary on the Notification. See (1981) 23 Mal. L.R. 258.
6 See The Straits Times of 6th October 1982.
7 Cap. 266, Singapore Statutes 1970 (Rev. Edn.).
8 This is not stated in the High Court's judgement but can be found in the judgement of the District Court; D.C. Summons No. 1419 of 1981.
9 Under the Control of Rent Act, in order to provide for security of tenure, the concept of "statutory tenant" was created, see section 27 of the Act. Where the landlord purports to terminate a tenancy of rent controlled premises and the tenant may not be removed under sections 15 and 16, the tenant becomes a "statutory tenant." As a "statutory tenant" he cannot be removed if he remains in possession.

It was argued by the respondent that under paragraph 2(a), so long as any domestic premises which, after 24th October 1980 (the date of commencement of the Natification), have not for any period of time been occupied by the owner or which, after 24th October 1980 have not for any period of time been let to a tenant are exempted from the Act and have thus become de-controlled premises.[10] The full court rejected the argument of the respondent, reversed the decision of the District Court and held that the appellant was entitled to remain in possession.

Statutory Interpretation

In construing paragraph 2(a) of the Notification Lai Kew Chai J. who delivered the judgment of the court stated that "it is unavoidably necessary" to imply the words "in the possession of the owner" after the word "Notification",[11] for two reasons; firstly to show non-occupation or non-letting, the owner necessarily has to show that in law he has been in a position to occupy or let out the premises; this requires, so reasoned the court, that he has legal possession of the premises. Secondly if the words are not read into the Notification, it would result in "manifest injustice or absurdity."

Dealing with the second reason first, a plain and literal construction of paragraph 2(a) of the Notification would mean that any domestic premises which after 24th October 1980 have not for any period been occupied by the owner *or* have not for any period been let to a tenant are exempt from rent control. Reading the paragraph disjunctively as the use of "or" would *prima facie* require, the paragraph could be broken into two limbs which could indeed lead to some injustice and absurdity. The court pointed out that any domestic premises occupied by a tenant, or a statutory tenant or a member of the family of a deceased tenant or statutory tenant must necessarily be one which have not since been occupied by the owner. Although this is not invariably the case[12] (as the court seems to think), the point is taken that in all situations where the whole premises are let out to a tenant, this would be true and would lead to all these premises being exempt from the Act. Such an interpretation would virtually nullify the Act and de-control almost all rent-controlled premises. This of course could not have been intended by the Notification. Is this construction unavoidable unless we read the words "in the possession of the owner" into the paragraph? It is submitted that this was not the only possibility open to the court.

One other possibility which the court did not appear to consider is to read the "or" to mean "and". It is true that one does not

[10] Although it is not clearly stated in the judgement, the respondents must have argued that the premises here were not occupied by themselves as landlord nor let to a tenant, since the tenancy had been terminated; the appellant was not staying on as a tenant but as a "member of the family" of the deceased statutory tenant.

[11] To read grammatically, the words implied should have been "are in the possession of the owner and" instead of "in the possession of the owner".

[12] An example of a situation to the contrary is where the landlord occupies part and lets out part of the premises. In such a situation, although the premises are occupied by the tenant, it is also occupied by the landlord. Note that under clause 3 of the Notification, part of a building can be considered "domestic premises" only if it has a house number allotted to it under section 46 of the Property Tax Act.

generally read "or" as "and", "because "or" does not generally mean "and" and "and" does not generally mean "or","[13] but here in its grammatical context the "or" must be read as being conjunctive, as the use of "have not" qualifying the two conditions of non-occupation by the landlord and non-letting renders the use of "and" inappropriate. Aside from English grammar, the context in which "or" is used in a statute may make it necessary to read it to mean "and". This case is rather similar to the case of *Fowler v. Padget,*[14] where the Act of Jac. 1., c. 15, made it an act of bankruptcy for a trader to have his dwelling-house to the intent *or* whereby his creditors might be defeated or delayed. The "or" if construed literally as being disjunctive would have made every trader commit an act of bankruptcy if he casually left his dwelling-house and some creditor called for payment during his absence. To avoid this rather absurd consequence, the court read the "or" conjunctively. This it is submitted could similarly be done in this case.

At this juncture, it should be pointed out that, there seems to be no logical reason why the Notification has imposed as a condition for de-control that the premises "have not for any period been occupied by the owner" in addition to (or as the Court thought, *in lieu* of) non-letting. It is not clear what purpose this requirement is supposed to serve; for if the rent control premises have not been let out, it seems superfluous to require that there must also be non-occupation by the owner before the premises can be de-controlled. Indeed, on the view taken by the Court that the two requirements should be read disjunctively, it makes the Notification seem absurd. The only explanation that the writer can think of for this rather curious requirement is that, the draftsman of the Notification probably envisaged a situation where rent control premises are lying vacant because the owner has alternative accommodation but has not let out the rent control premises for fear of encumbering himself with an unremovable tenant. It was probably to prevent such wastage of resources that the Notification was passed; if so the requirement of non-occupation by the owner was introduced *ex abudante cautelae.*

The Rights Of "Members Of The Family" of a Statutory Tenant.

Reading the "or" conjunctively would mean that both conditions must be satisfied before the premises are deemed de-controlled, and this would avoid the absurdity of de-controlling all premises not occupied by the landlord. However it might not help the appellant in this case for both conditions seem to be satisfied here, as the premises were neither occupied by the landlord nor let to a tenant. In their Lordships' view, the appellant was not a tenant of the respondent, she was the widow of the tenant. So, reading the "or" conjunctively would still not prevent the "existing rights" of members of the family of the tenant being taken away. These existing rights which the court felt a literal interpretation of the second limb would take away arise because in the court's view, "It is settled law that a member of the family of a deceased tenant or statutory tenant of domestic premises who resides therein is protected by the Act against an order for recovery of possession." The protection is supposedly provided by

[13] *Per* Scrutton L.J. in *Green* v. *Premier Glynrhonwy Slate Co.* [1928] 1 K.B. 561, 568.
[14] 7 T.R. 509.

section 16(c) and it required a two-stage development in its interpretation to do it.

Section 16 of the Act was intended to give the landlord additional grounds to recover domestic premises from the tenant and paragraph (c) in particular provides that, an order for possession may be made

"(c) where neither the tenant nor any member of his family is residing in the premises or any part thereof."

However, a number of cases have concluded that, : "It follows, by necessary implication, that the landlord has no right in such circumstances to recover possession if either the tenant or any member of his family resides therein... ,"[15] Thus by this process of implication members of the family of a tenant were permanently lodged in rent control premises and it also set the stage for the protection of members of the family of a statutory tenant. All that was required was a seemingly logical conclusion that 'tenant' as used in section 16(c) and defined in section 2 of the Act includes a statutory tenant. There was no lack of judges to draw this conclusion. In *Foo Kok Hui* v. *Saraswathy & Anor.,*[16] Ambrose J. held that the widow of a statutory tenant enjoyed the protection conferred by section 16 by virtue of her residing in the premises after his death. Although he did not give any reason for his decision, it is implicit in his judgment that he regarded the deceased statutory tenant as a tenant for the purpose of section 16(c). More explicit is Chua J's judgment in *Yeo Seow Inn* v. *Chan Khit*[17] where his Lordship stated that in his view ".. .the widow of a statutory tenant is protected under the Ordinance. When one looks at the definitions of "tenant" and "members of the family" there is no doubt that the legislature intended to protect not only the widow of a contractual tenant but also the widow of the statutory tenant."

So the story is told. This is the "settled law" referred to by Lai J. and it has also been said that "the courts have been unanimous in deciding that a member of the family of a statutory tenant who continues to reside in domestic premises after the death of such tenant enjoys the protection conferred by section 16(c)."[18] The truth is that the law is neither settled nor are the courts unanimous on this.

The Singapore case of *Tan Khoi Soei* v. *Ban Hin Lee Bank Ltd,*[19] which went on appeal to the Federal Court seems to lend support for the contrary view. There the sons of the deceased statutory tenant sought to occupy the premises let to their father. The court held that there was no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts. As a result, following the English cases of *Keeves* v. *Dean*[20] and *John Lovibond & Sons Ltd.* v. *Vincent,*[21] the court held that the right of a statutory

[15] See, for example, Winslow J. in *Hoo Yan Meng* v. *Esah* [19701 1 MLJ. 126, 127.
[16] [1961] M.L.J. 91.
[17] [1967] 2 M.L.J. 197, 201.
[18] *Per* Winslow J. in *Hoo Yan Meng* v. *Esah, ibid,* at page 128.
[19] [1964] M.L.J. 71.
[20] [1924] 1 K.B. 685.
[21] [1929] 1 K.B. 687.

tenant was a purely personal right and "no rights of any sort in respect of premises... passed to the Chief Justice or to his family or to his personal representative or to anybody else and those who were in physical occupation of the premises after his death were trespassers."[22] It is true, as Winslow J. pointed out when subsequently distinguishing the case in *Hoo Yan Meng* v. *Esah,* that the decision did not turn on any consideration of section 16(c) because the premises involved were business and not domestic premises. Therefore the court was not required to determine the question whether a member of the family of a deceased statutory tenant is protected under section 16(c). However, the tenor of the whole judgment does suggest that it should be equally applicable to domestic as well as business premises, for the Court's decision centred on the nature of a statutory tenancy and its decision that no rights can pass to the members of the family can equally apply to occupants of domestic premises. This was in fact so held by the Malaysian Court in *Yap Cheng Kee & Anor.* v. *Ow Giam Eng & Anor.,*[23] where the Court decided that the children of a deceased statutory tenant were not protected by the Malaysian equivalent of section 16(c),[24] reasoning from the judgment in *Tan Khio Soei's case* that "since the statutory tenant's right is a personal one ceasing on his death, the word "tenant" in section 12(l)(i) of the 1956 Ordinance can only mean "contractual" tenant. The definition of "tenant" in section 27(1) of the Ordinance does not apply."[25]

Finally, the case of *Indo Australian Trading Co. Ltd.* v. *Masahat & Ors.*[26] should perhaps be mentioned. Here Chua J. after having decided that one Madam Puteh binte Ghani was a statutory tenant, surprisingly concluded that her husband and daughter were not protected by section 16. His Lordship (as pointed out) subsequently expressed a contrary view in *Yeo Seow Inn* v. *Chan Khit.* However as Winslow J. rightly pointed out,[27] Chua J.'s decision that Madam Puteh was a statutory tenant was erroneous, for she was never a contractual tenant.[28] More probably Chua J. regarded Madam Puteh as protected because she was a member of her father's (the contractual tenant's) family and that therefore her own husband and daughter were not protected because they were not members of the family of the tenant. Still the cases cited are sufficient to show that the point is open for argument and this should allay any fear that by interpreting paragraph 2 of the Notification literally we are removing the vested rights of the members of the family of the statutory tenant. It is clear that this was uppermost in the minds of their Lordships in this case, although they were not as candid as the District Judge when

[22] *Ibid,* at page 73.
[23] [1975] 1 M.L.J. 151.
[24] Section 12(1)(i) Control of Rent Ordinance 1956.
[25] *Supra* note 23 at page 153.
[26] [1961] M.L.J. 259.
[27] In *Hoo Yan Meng* v. *Esah, supra* note 15 at page 128.
[28] As Thomson C.J., laid down in *Ramasamy Pillai* v. *Meyeppa Chettiar* [1955] M.L.J. 105, 4 conditions must be fulfilled before one can become a statutory tenant: —
(a) he must have been a tenant of the premises;
(b) his tenancy must have been determined, not assigned or anything of the sort;
(c) he must have remained in possession of the premises after the determination of his tenancy; and
(d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises.

he stated that: "The only issue for determination in this case is whether with the coming into force of the "1980 Notification" in 1980, the protection accorded to such widows by the courts is removed."[29]

Even if we accept the proposition that the law is settled and members of the family of the statutory tenant do have such vested rights, it is submitted that the words of the Notification are plain and clear enough to remove these rights, that is any domestic premises which have not been occupied by the owner or let to a tenant are de-controlled. What other forms of words do their Lordships require to make the language any more plain and unambiguous?

In any event, as their Lordships themselves admitted, the general rule of construction is not to import into statutes words which are not found there unless it is necessary to do so to give the provisions sense and meaning in their context. It is submitted that it should not be done here, as the words of the Notification have a clear meaning without having to read words into it. What their Lordships have done here amounts to legislating, not just interpreting the statute. In this regard one could do well to bear in mind the advice of Lord Morton that, "... it is not the function of any judge to fill in what he conceives to be the gaps in an Act of Parliament." To do so, added Lord Simonds, is a "... naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in."[30] Here we are not even sure if the apparent gap was not intended. If the legislature had seen fit to accord protection to members of the family of the tenant in the Notification it would have done so expressly. For all we know, the Notification is a response to the numerous calls for repeal of the Act on the ground that it has outlived its usefulness. It could have been the intention that unless the premises are occupied by the landlord himself or let out to a tenant, it would be de-controlled. In any event it is so expressed in the Notification.

One can understand that the justice of the case rests with the appellant. Here we have a poor widow and her family lined up against a large realty company, which has sought to invoke the new legislation to drive them from their home, but next we might have a poor landlord being blackmailed by the members of the family of a tenant, demanding huge compensation to vacate the premises. What then? In any event judges could do well to heed the advice of Bridge LJ. that "The clouds... may be big with justice but we are neither midwives nor rainmakers."[31]

Is Legal Possession Necessary?

As for the Court's first ground that in order to show non-occupation or non-letting, the owner must show that he is in a position to occupy or let, which requires him to have legal possession; this, it is submitted, does not necessarily follow. Firstly, there is no such

[29] D.C. Summons No. 1491 of 1981 at page 2.
[30] *Major and St. Mellows Rural District Council* v. *Newport Corporation* [1952] A.C. 189, 192, 191.
[31] The Siskine, [1977] 3 All E.R. (C.A.) 803, 821.

condition laid down in the Notification. Secondly, as a matter of legal principle, there is no such requirement. Non-occupation and non-letting are states of fact: to show the non-existence of these states of fact, proof is not required that one is capable of doing either. Anybody can show that the premises are neither occupied nor let out but of course he is not entitled to recover the premises, unless he is the owner and has the legal title.

An Alternative Ground

If the judges felt compelled by their conscience or sense of fair play to decide in favour of the widow, there was perhaps a better way of going about it. This is to hold that members of the family of a tenant who stayed on in the premises after the demise of the tenant are themselves "tenants" within the meaning of the Notification, so that the premises are not de-controlled as it is occupied by a "tenant." Their Lordships dismissed this possibility when they concluded that, "The protected person (i.e. the member of the family of the tenant) is not defined or deemed to be a tenant under the Act." This is perhaps too simplistic. The protected person must have a status; he is not a licensee for he cannot be removed as such and to treat him as a licensee might create problems, for example, where the deceased tenant has sublet part of the premises, can he continue to receive rents?[32] He can, it is submitted, be described as a tenant, without abuse to the word.

There is some oblique support for this in *B.T. Hassan v. G.A. Scully*[33] and *Indo Australian Trading Co. Ltd.* v. *Lim Hoon & Anor.*[34] decided by Jobling J. and Chua J. respectively. Both their Lordships had no doubt whatsoever that the legislature intended to protect the son and the widow respectively and that "the legislature intended that the *tenancy should continue* (emphasis added) after the death of the tenant... ."[35] Although Winslow J, in his elaborate judgment in *Hoo Yan Meng* v. *Esah* stated that a member of the family of the deceased tenant does not by virtue of the protection accorded by section 16(c), acquire any kind of tenancy, his Lordship concluded that, "He is to all intents and purposes, a tenant even though he is neither a contractual nor a statutory tenant."[36] His Lordship described him as a "compulsory quasi-tenant", nonetheless still a tenant. The definition in section 2 of the Act does not pose an obstacle for there "tenant" is defined as "the tenant of premises in respect of which a tenancy exists...", which of course does not help or hinder this interpretation. This approach at least has the advantage that words need not be read into the Notification, which should be avoided as far as possible.

Conclusion

The decision of the panel once again demonstrates the inadequacy of the present provisions to free premises from the clutches of the

[32] For a more detailed discussion see T.T.B. Koh's "Rent Control in Singapore" (1966) 8 Mal. L.R. 176, 218.
[33] [1951] M.L.J. 141
[34] [1961] M.L.J. 259.
[35] *Per* Chua J. in *Indo Australian Trading Co. Ltd.* v. *Lim Hoon & Anor., ibid.,* at page 260.
[36] *Supra* note 15 at page 129.

Act. Few people would dispute the fact that today rent control has outlived its usefulness. It was conceived in a state of emergency, in 1917, after the outbreak of the First World War where the acute shortage of housing resulted in tenants being exploited by their landlords.[37] However this is no longer the case and in fact very often tenants in rent controlled premises are holding up development because of their refusal to vacate or their landlord's inability or unwillingness to concede to their exorbitant demands for compensation. On the other hand, it is also clear that immediate repeal of the Act may cause hardship, as there are genuine cases of people who cannot afford to pay market rent for their premises.

With this in mind, it might not be inappropriate to conclude by making a few suggestions on how de-control of rent control premises might be carried out. The first step should be the amendment of the Notification, to make it clear whether or not the premises are to be deemed de-controlled if members of the family of a tenant (whether contractual or statutory) are staying in it. In this regard a compromise could be reached by giving to the landlord a right to recover the premises upon the death of the tenant by either giving the members of the family a grace period *e.g.* 5 to 6 years to stay on the premises to enable them to find alternative accommodation or *in lieu* thereof compensation to be determined by a tribunal. Another possibility which has been suggested[38] is that if a landlord wishes to develop his property (outside the Golden Shoe Area),[39] the landlord should be entitled to evict the tenant upon adequate compensation being given, provided that he completes his development within a stipulated time. Whatever may ultimately be done, we should work towards the eventual abolition of this anachronistic Act.

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[37] For a further discussion see T.T.B. Koh's "Rent Control in Singapore" *ibid.,* at page 32.

[38] See Cheng Tim Pin's "The Control of Rent Act — A Decontrol Now or Later" [1981] 1 M.L.J. 1xvii.

[39] Under the Controlled Premises (Special Provision) Act Cap. 267, Singapore Statutes 1970 (Rev. Edn.), the only other de-control provision, besides the Notification, it is provided that owner of properties, situate in certain designated areas (known as the Golden Shoe Area) can recover possession if they intend to develop these properties. Compensation roust be paid to the tenants under the terms of the Act.