

Tan Hin Leong v Lee Teck Im
[2001] SGCA 7

Case Number : CA 66/2000
Decision Date : 30 January 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Cheong Yuen Hee and Sum Chong Mun (CM Sum & Co) for the appellant; James Ponniah and CP Lee (CP Lee & Co) for the respondent
Parties : Tan Hin Leong — Lee Teck Im

Land – Licences – Licence to occupy property – Whether licence contractual – Whether licence terminable – If so, whether terminable by notice

(delivering the grounds of judgment of the court): This was an appeal from the decision of GP Selvam J, in which he held that the respondent, Lee Teck Im, has a contractual licence to occupy the property known as 4, Jalan Lada Puteh (`the property`) for the duration of her life, and that the appellant, Tan Hin Leong, who is the owner of the property, was not entitled to terminate her licence. [See [2000] 3 SLR 85.] We dismissed the appeal and now give our reasons.

Background

One Tan Choon Swee (`Tan`) was the father of the appellant. Tan had three `wives`, one of whom was the respondent. The respondent met Tan in 1954, when she was 21 years old. Their relationship blossomed and they began living together. Tan bought the property in 1962, and thereafter he and the respondent lived there. The respondent is now 67 years old. She is not the appellant`s mother.

In 1965, Tan bought a property known as 75, Ming Teck Park (`the Ming Teck Park property`) in the sole name of the respondent. This Ming Teck Park property was rented out after the purchase. Later, an undivided half share of that property was transferred to Tan, and the respondent and Tan became the owners of the Ming Teck Park property as tenants-in-common in equal shares.

In 1983, the property (No 4 Jalan Lada Puteh) was transferred by Tan to the appellant by way of gift, and a deed of gift dated 29 December 1983 was executed by Tan. It was intended to be a marriage gift from Tan to the appellant. Notwithstanding the transfer, Tan and the respondent continued to reside at the property. The appellant at that time was studying in the United States of America and apparently still resides there.

In 1987, two important transactions were effected which eventually gave rise to the present dispute. First, Tan transferred his half share in the Ming Teck Park property to one Madam Ang Ah Bak (`Madam Ang`), his other co-habitant and one of his `wives`. In consequence, the respondent and Madam Ang became the owners of the Ming Teck Park property as tenants-in-common. Thereafter, Madam Ang and her family moved into the Ming Teck Park property and resided there. Madam Ang was also not the appellant`s mother.

The second transaction was the execution of a deed made between the appellant and the respondent dated 5 December 1987 (`the deed`) at the instance of Tan. The deed stipulates the terms upon which the appellant would allow the respondent to remain in occupation of the property. As we shall discuss in a moment, the construction of this deed was the central issue in this appeal.

Tan died in 1988 and Madam Ang died in 1989. Upon Madam Ang's death, one Tan Hin Teng ('Hin Teng'), the son of Tan and Madam Ang, inherited Madam Ang's share in the Ming Teck Park property. Hin Teng and his family continued to reside at the Ming Teck Park property. This remained the position for some eight years. Then in 1996, the respondent applied to the High Court for an order that the Ming Teck Park property be sold and the proceeds of sale be divided equally between her and Hin Teng. The order was granted on 21 February 1997. Pursuant to the order the Ming Teck Park property was sold and the respondent received her share of the proceeds of sale which amounted to about \$1.305m.

Apparently the sale of the Ming Teck Park property and the receipt of her share of the proceeds of sale by the respondent triggered the events that followed. The appellant took the view that with her share of the proceeds the respondent could afford to purchase, and should purchase, a house to stay in and should not continue to reside at his property. He therefore took steps to terminate the respondent's occupation of the property. He consulted his solicitors and on his instructions they issued and served two notices to quit on the respondent, one on or about 28 December 1996 and the other on 18 June 1998. However, the respondent refused to vacate the property; she claimed that she was entitled to occupy the property for the duration of her life.

Proceedings below

Thereupon, the appellant initiated proceedings against her in OS 1466/98 which was later converted into a writ action. The appellant in his statement of claim did not assert that the respondent had breached any of the terms or covenants contained in the deed or any of her obligations thereunder. His case was that the respondent was a bare licensee, and the licence had been revoked by the notices to quit, and accordingly she had no right to remain on the property. By continuing to remain in occupation, she had become a trespasser. He sought an order that the respondent deliver up vacant possession of the property and for damages for trespass.

The respondent denied that she was a bare licensee. Her defence was that she was a contractual or equitable licensee. She relied on the deed and claimed that the deed entitled her to occupy the property until her death, as long as she did not breach any of the terms or covenants in it.

The judge held that the respondent's right of occupation of the property was created by the deed which was a formal document executed by the parties, and that both of them had acted on the terms of the deed for more than ten years. There were reciprocal rights and obligations under the deed. The respondent provided consideration by forgoing her right to make any claim adverse to the interests, rights and title of the appellant; by undertaking to expend money to keep the property in good repair; and by undertaking to pay an annual rent of \$12. The judge held that the deed gave to the respondent a contractual licence to occupy the property, but the licence was not for an indefinite and indeterminable period terminable with reasonable notice, because the deed defined the extent and character of her right of occupation. It also defined the circumstances under which her right of occupation could be terminated. Subject to those circumstances, the respondent had a contractual licence to occupy the property for the duration of her life. Therefore, the notices to quit had no effect and the respondent was entitled to remain in occupation of the property.

The appeal

Before us, Mr Cheong Yuen Hee for the appellant challenged the judge's conclusion that the respondent had a contractual licence to occupy the property. He submitted that the appellant

allowed the respondent to occupy the property purely out of goodwill and that what the respondent had was only a bare licence and a bare licence could be revoked at will.

The deed

Before we turn to the construction of the deed, it is necessary to say a word on the factual matrix in which the parties were when the deed was executed. Tan, while he was alive, and the respondent had all along been residing in the property since the purchase thereof in 1962. After Tan had transferred it to the appellant in 1983, he and the respondent continued to live there. It appeared to us that, so far as Tan was concerned, he probably still regarded the property very much as the home for both of them, although he had given it to the appellant. This was partly induced by the fact that at all material times the appellant and his family lived in the United States and did not require a place of abode in Singapore. Tan passed away in February 1988, but before that happened, he must have formed the intention of providing a permanent place of abode for the respondent, with whom he had cohabited for over 30 years. Of course, he was not unmindful of the fact that he had given the respondent an undivided half share of the Ming Teck Park property; but that property was occupied, and had been so occupied for some years, by his other co-habitant, Madam Ang and her children by Tan. It was obvious that he did not intend that the respondent should live with Madam Ang under one roof. A separate place of abode had to be provided for the respondent. It seemed to us that probably it was for this reason that in 1987 he caused and procured his son, the appellant, to execute the deed; and that was duly executed by the appellant in December 1987. At that time, Tan was not in good health. The appellant said that Tan was suffering from cancer. He died in February 1988.

It was apparent to us that the terms of the deed, in substance, at any rate, were dictated by Tan, and the appellant executed the deed at the bidding of and in compliance with the wishes of his father. Again, so far as Tan was concerned, clearly the intention or purpose of causing his son to execute the deed was to provide the respondent with a place of abode for the duration of her life. It seemed to us that this intention or purpose must have been known to and understood by the appellant at the time when he executed the deed. It was in these circumstances that the deed was executed.

We now turn to the construction of this deed which was the central issue in this appeal. The relevant provisions are as follows:

Now this deed witnesseth as follows:

(1) In consideration of the premises aforesaid, the owner hereby permit the occupier to remain in occupation of the said property at a nominal annual rental of Singapore Dollars \$12 only.

(2) The occupier hereby covenants that:

(a) she will at all times during the occupation of the said property, keep the same in good and substantial repair and condition and shall at all times permit the owner, his servants or agents to enter upon the same for the purpose of inspecting the said property.

(b) she shall pay all Telecoms and PUB bills in respect of the said property as soon as the same shall become due.

(c) she shall use the said property only for the purpose of and as a residence only and will not under any circumstances mortgage sell transfer lease agree to lease let sub-let licence or part with the actual or legal possession of the said property or any part thereof and shall not in particular leave the said property vacant or unoccupied for any period exceeding seven (7) consecutive days.

(3) The occupier hereby irrevocably consents and undertakes that she her legal representatives and/or successors shall not under any circumstances whatsoever make any claim whatsoever or otherwise adverse to the interests, rights and/or title of the owner in the said property and the occupier hereby further confirms that she is in occupation of the said property only with the leave and licence of the owner and the licence herein granted is personal to the occupier and shall automatically lapse upon her death.

(4) If the occupier shall commit a breach of any of the covenants herein, the owner's leave and licence granted herein shall be forthwith revoked without any prior notice whatsoever to the occupier and the owner shall be entitled to re-enter and recover possession of the said property and in such an event, the occupier shall deliver vacant possession of the said property to the owner and further remove or caused to be removed all her chattels and belongings in the said property failing which, the owner shall be at liberty to remove the same at the costs and expense of the occupier without being liable responsible or having to account to the occupier for any loss, damage whatsoever and howsoever caused to the same and without prejudice to the owner's rights of re-entry and to commence legal proceedings against the occupier for possession of the said property or in respect of or in connection with the occupier's use of the said property.

Purely on these terms, the respondent was given a licence to occupy the property. In consideration of that she agreed to pay an annual rent of \$12 and undertook certain obligations with reference to the property. Among other things, by cl (2) she undertook to keep the property in good repair and condition, and by cl (3) she undertook not to make any claim adverse to the appellant's rights and interests in the property. There was certainly consideration provided by her in the deed. Even if no consideration was provided, the deed is nonetheless valid, as 'consideration is not necessary for the validity of a promise in a deed': see **The Law of Contract** (10th Ed) by GH Treitel at p 145. It was also expressly provided in cl (3) that her occupation of the property was 'with the leave and licence' of the appellant and that the licence granted was 'personal' to her and would 'automatically lapse upon her death'. The next clause, cl (4), set out the various circumstances in which the appellant was entitled to terminate the licence.

On the true construction of this deed, what was created in favour of the respondent was a contractual licence to occupy the property. The next question is whether the contractual licence is one for an indefinite and indeterminable period or one for a limited time. On this point, cl (3) makes clear that the licence is limited to the lifetime of the respondent, subject to the right of the appellant to terminate the licence in certain circumstances, ie in the circumstances set out in cl (4) thereof. The licence is not terminable at will. We therefore agreed entirely with what the judge said at [para] 30 and 31 of his judgment:

30 A careful reading of the deed reveals that the deed created a contractual

licence as it is understood by equity lawyers today. It is not revocable at the whim and will of the plaintiff. It is not a licence for an indefinite period but one with inbuilt limitations. It is the kind of licence which a man would extract from his son to whom he gives the property as a gift but wants to ensure that his wife has a roof over her head during her life. A court of equity will not view it as a bare licence terminable at the will of the son and turn out his mother.

31 There was a contractual licence because right of occupation was created by a deed signed, sealed and delivered by the plaintiff and the defendant. It was a formal document executed with a serious intention. More importantly the parties acted on the terms of the deed for more than 10 years. It provided for reciprocal rights and obligations. The defendant provided consideration by foregoing forever her right to make any claim adverse to the interests, rights and title of the plaintiff; by undertaking to expend money to keep the property in good repair; and by undertaking to pay a rental of \$12 every year.

Later, having said that the licence was not coupled with an interest in the property he continued at [para] 33:

The contractual licence is not revocable at will because there is an implied irrevocability at will. The implication arises from the fact that the deed defines the circumstances giving the right to end the right of occupation. If those circumstances cannot be established it is to last for the life-time of the defendant.

This was a case where the contractual licence was expressly created by contract with its terms clearly stipulated. It was much more straightforward than the two cases referred to and discussed by the judge, where in both cases the court had to imply a contractual licence from the acts and conduct of the parties involved.

The first is **Hardwick v Johnson** [1978] 2 All ER 935[1978] 1 WLR 683. In that case, the plaintiff bought a house in her own name for her son and his wife, the defendant, to live in. The couple were required to pay o7 a week as `rent`. The marriage later broke down and the son left. The defendant continued to live in the house with her child. The plaintiff sought to recover possession of the house after the defendant had refused to move out. In the Court of Appeal, Lord Denning MR treated the defendant`s right to occupy the house as an equitable licence and decided that the defendant could stay as long as she paid o28 a month. His Lordship said at [1978] 2 All ER 935, 938-939; [1978] 1 WLR 683, 688:

*Of all these suggestions, I think the most fitting is a personal licence. The occupation of the house was clearly personal to this young couple. It was a personal privilege creating a licence such as we have often had: see **Errington v Errington and Woods** [1952] 1 KB 290. I do not think it could properly be called a contractual licence because it is difficult to say that this family arrangement was a contract. **Balfour v Balfour** [1919] 1 KB 571 is authority for saying there was no contract. I should have thought it was more in the nature of an equitable licence of which the court has to spell out the terms.*

Roskill LJ, however, treated the licence as a contractual one and also held that the defendant could remain in occupation of the house as she was not in breach of the conditions of the licence. Roskill LJ said at [1978] 2 All ER 935, 940; [1978] 1 WLR 683, 690-691:

It is plain, as the deputy judge said, that there was here never any tenancy. It is equally plain, in my judgment, that there was here a licence; and for my part, with respect to Lord Denning MR, I prefer to call it a contractual licence rather than an equitable licence.

*The only question we have to decide is what was the nature of that contractual licence. Was it a licence to both the son and his future wife as joint licensees or was it a licence to the son alone? Nobody contemplated the possibility that this marriage would break down as soon as it did. Nobody contemplated that the son would within a couple of years or so go off and have an affair with another woman, abandoning his wife with the child of the marriage who remained in the house. What the parties would have agreed upon if they had thought of that possibility in March 1973 no one can tell; but the court, as Lord Denning MR has said and as has been said many times before (and Lord Diplock also said it in **Pettitt v Pettitt** [1970] AC 777), has in those circumstances to impute to the parties a common intention to make some arrangement in the events which have occurred, albeit unexpectedly. I cannot, for my part, think that anybody would impute to these parties an intention that if the marriage broke down as soon as it did and the husband went off with another woman the wife would be liable to be ejected from the home together with the child of the marriage. It seems to me that the arrangement was perfectly straightforward: it was a joint contractual licence to the husband and wife to live there. It was not conditional upon the marriage succeeding. It was not conditional upon a number of other possibilities.*

Browne LJ, the third member of the court, concurred with Roskill LJ that the nature of the licence was a contractual one.

The second case was **Tanner v Tanner** [1975] 3 All ER 776[1975] 1 WLR 1346. There, the defendant was the plaintiff's mistress and gave birth to twin daughters of whom the plaintiff was the father. They decided to purchase a house so as to provide a home for the defendant and their two daughters. Accordingly, the plaintiff bought a house and as a result the defendant gave up her rent-controlled flat to move into the house. She also spent some money in furnishing it. Their relationship subsequently broke down and the plaintiff later began a court action to repossess the house. The defendant resisted the claim on the ground that the house was hers and the children's until the latter left school. The Court of Appeal found that the defendant bought the house 'in the contemplation and expectation that it would provide a home for the defendant and the twin daughters', and the defendant had provided consideration by giving up her rent controlled flat and looking after the children, and the court implied a contractual licence in favour of the defendants and the twin daughters. Lord Denning MR said at [1975] 3 All ER 776, 779-780; [1975] 1 WLR 1346, 1350:

She had given up her flat where she was protected by the Rents Act - at least in regard to rent and it may be in regard also to security of tenure. She had given it up at his instance so as to be able the better to bring up the children. It is impossible to suppose that in that situation she and the babies were bare licensees whom he could turn out at a moment's notice. The plaintiff recognised this when he offered to pay the defendant £4,000 to get her out. What was then their legal position? She herself said in evidence: 'The house was supposed to be ours until the children left school.' It seems to me that enables an inference to be drawn, namely, that in all the circumstances it is to

be implied that she had a licence - a contractual licence - to have accommodation in the house for herself and the children so long as they were of school age and the accommodation was reasonably required for her and the children. There was, it is true, no express contract to that effect, but the circumstances are such that the court should imply a contract by the plaintiff - or, if need be, impose the equivalent of a contract by him - whereby they were entitled to have the use of the house as their home until the girls had finished school. It may be that if circumstances changed - so that the accommodation was not reasonably required - the licence might be determinable. But it was not determinable in the circumstances in which he sought to determine it, namely, to turn the defendant out with the children and to bring in his new wife with her family. It was a contractual licence of the kind which is specifically enforceable on her behalf: and which the plaintiff can be restrained from breaking; and he could not sell the house over her head so as to get her out in that way.

Browne LJ, the other member of the court, agreed with Lord Denning MR that the defendant had given consideration for the licence, which was a licence to occupy the house so long as the children were of school age and as the defendant reasonably required for herself and her twins, subject to any relevant change of circumstances. Brightman J, the third member of the court, said at [1975] 3 All ER 776, 781; [1975] 1 WLR 1346, 1352:

The defendant in the present case was clearly a licensee of accommodation in the house with a right to occupy it for herself and the twins so long as the licence was not lawfully terminated. The question then arises whether the plaintiff was entitled to revoke the licence at short notice. If the licence had been granted without any consideration at all, then it could have been revoked at short notice. In my opinion there was consideration. I think that the proper inference to be drawn from the facts is that the defendant was granted a licence on the terms that she would give up her rent controlled flat in Steeles Road and look after the twins at 4 Theobalds Avenue. The licence which is to be inferred on the particular facts of this case was, in my opinion, as Lord Denning MR has said, a licence to occupy accommodation in the house so long as the twins should be of school age and such accommodation should reasonably be required for the defendant and her children.

A case which bears some similarity to the case at hand is **Binions & Anor v Evans** [1972] Ch 359[1972] 2 All ER 70. There, the defendant's husband worked in an estate and, while he was alive, he and the defendant had been living in a cottage in the estate. After the death of her husband, she continued to live in the cottage. The trustees of the estate agreed to allow her to continue living in the cottage, and accordingly entered into an agreement with her in writing under which she was permitted to 'to reside in and occupy' the cottage 'as a tenant at will' and 'free of rent for the remainder of her life or until determined' as provided in the agreement. Under the agreement the defendant undertook, among other things, to keep the cottage in good repair and condition and to 'personally occupy and live' in the cottage as a private residence and to deliver vacant possession to the trustees upon her ceasing personally to live there. Subsequently, the trustees sold the cottage to the plaintiffs, and in the sale a special provision was inserted which protected the defendant's right of occupation of the cottage. As a result of the provision, the plaintiffs paid a reduced price for the cottage. After the completion of the purchase, the plaintiffs gave notice to quit to the defendant and, upon the defendant refusing to comply with the notice, instituted proceedings to recover possession of the cottage. The county court judge held that the plaintiffs held the cottage on trust to permit the defendant to reside in the cottage during her life or as long as she desired and dismissed the plaintiffs' claim. They appealed, and the appeal was dismissed by the Court of Appeal.

Lord Denning MR held, inter alia, that the agreement gave rise to a contractual licence resulting in an equitable interest which the court would protect. His Lordship said at [1972] Ch 359, 367; [1972] 2 All ER 70, 75:

*Seeing that the defendant has no legal estate or interest in the land, the question is what right has she? At any rate, she has a contractual right to reside in the house for the remainder of her life or as long as she pleases to stay. I know that in the agreement it is described as a tenancy: but that does not matter. The question is: What is it in reality? To my mind it is a licence, and no tenancy. It is a privilege which is personal to her. On all the modern cases, which are legion, it ranks as a contractual licence, and not a tenancy: see **Shell-Mex and BP Ltd v Manchester Garages Ltd** [1971] 1 WLR 612.*

*What is the status of such a licence as this? There are a number of cases in the books in which a similar right has been given. They show that a right to occupy for life, arising by contract, gives to the occupier an equitable interest in the land: just as it does when it arises under a settlement: see **In re Carne's Settled Estates** [1899] 1 Ch 324 and **In re Boyer's Settled Estates** [1916] 2 Ch 404. The courts of equity will not allow the landlord to turn the occupier out in breach of the contract: see **Foster v Robinson** [1951] 1 KB 149; nor will they allow a purchaser to turn her out if he bought with knowledge of her right - **Errington v Errington and Woods** [1952] 1 KB 290.*

The other two members of the court, Megaw and Stephenson LJ, held that the defendant under the agreement was a tenant for life within the meaning of the Settled Land Act 1925. All three members of the court held that the plaintiffs took the cottage subject to the defendant's right under the agreement and on a constructive trust to permit the defendant to reside there during her life or as long as she desired.

Mr Cheong also argued that although the respondent's claim to an equitable licence was abandoned, the judge nonetheless wrongly found what was in effect an equitable licence because the judge allowed principles of equity to creep into the construction of the deed. In support he referred to the following passage from the judge's grounds of decision: 'A careful reading of the deed reveals that the deed created a contractual licence as it is understood by equity lawyers today. ... A court of equity will not view it as a bare licence terminable at the will of the son and turn out his mother.'

We were unable to agree. As discussed by the judge in his grounds of decision, the law relating to licences to occupy property has been modified by the fusion of common law and equity, and a contractual licence cannot be revoked at will. In addition to damages, equitable remedies such as specific performance or injunction are available to ensure that a licence will not be wrongfully revoked against the terms of the bargain. However, the imposition of equitable remedies does not change the fact that the licence is a contractual licence and not an equitable licence, ie a licence arising from the conduct or representation of the parties operating as an estoppel. Mr Cheong was in error in his submission that the learned judge was improperly influenced by the principles of equity and found what was essentially an equitable licence. This was not so. The judge did not find that the respondent had an equitable licence. What he did find was that the respondent had a contractual licence, and we agreed.

In **Chandler v Kerley** [1978] 2 All ER 942 [1978] 1 WLR 693 at 696-697, Lord Scarman delivering the main judgment of the Court of Appeal said:

If the defendant can establish a licence for life, there is neither room nor need

for an equitable interest. Since the fusion of law and equity, such a legal right can be protected by injunction: see **Hurst v Picture Theatres Ltd** [1915] 1 KB 1, **Winter Garden Theatre (London) Ltd v Millenium Productions Ltd** [1948] AC 173, and **Foster v Robinson** [1951] 1 KB 149, per Evershed MR, at p 156. If she cannot establish such a licence (express or implied), she cannot establish an equity: for no question of estoppel arises in this case. It is simply a case of what the parties envisaged by their arrangement: see **Dodsworth v Dodsworth** [1973] 228 EG 1115, where the Court of Appeal considered it not right to confer upon the defendants a greater interest than was envisaged by the parties. In the present case the parties certainly intended that the arrangement between them should have legal consequences. If, therefore, they agreed upon a right of occupation for life, there is a binding contract to that effect: if they did not so agree, there is nothing to give rise to an equity to that effect.

In a case such as the present, the role of equity is supportive and supplementary. Where the parties have contracted for a licence, equity will today provide an equitable remedy to protect the legal right, for example by injunction, which may be by interlocutory order, if the court considers it just and convenient: see s 45 Supreme Court of Judicature (Consolidation) Act 1925. If, however, the legal relationship between the parties is such that the true arrangement envisaged by the parties will be frustrated if the parties are left to their rights and duties at law, an equity will arise which the courts can satisfy by appropriate equitable relief.

There, a couple Mr and Mrs K had two children and they jointly bought a house intending it to be their family home. Later, their marriage broke down and Mr K left home but Mrs K continued to live there with her two children. Mrs K met the plaintiff and became his mistress. Subsequently, Mr and Mrs K tried to sell the house but could not find a buyer. The plaintiff offered to buy the house at a reduced price and the house was sold to him at that price. The house was bought on the understanding that Mrs K and her children could continue to live in the house and that the plaintiff would join them upon the marriage of Mr and Mrs K being dissolved. However, within six weeks of the purchase, the relationship between Mrs K and the plaintiff broke down and the plaintiff started proceedings to recover possession of the house. The Court of Appeal found that it was not possible in the circumstances to imply in favour of Mrs K a contractual licence to occupy the property for the duration of her life. The court found that there was a contractual licence but it was terminable on reasonable notice and 12 months' notice was reasonable.

Termination

Since the licence was a contractual one, it followed that termination had to be governed by the contract. Mr Cheong submitted that the judge was wrong to imply a term that the deed was irrevocable at will. Mr Cheong contended that firstly, the absence of any provision providing for termination upon notice and without cause merely meant that the licence was revocable upon reasonable notice; secondly, the reference, in cl (3) of the deed, to the automatic lapsing of the licence upon the death of the respondent was inserted ex abundanti cautela and did not give rise to the implication that it was an irrevocable licence during her lifetime. In his submission cl (4) of the deed provided for automatic termination with cause, that is, if the respondent should breach any of the covenants in the deed. However, since the deed was silent as to termination without cause, he contended that the appellant should be able to terminate the licence at will upon reasonable notice being given to the respondent. In brief, on his construction of the terms of the deed, the licence was

for an indefinite period and was revocable upon reasonable notice.

He relied in support on the New Zealand case of **Anchor Butter Co Ltd v Tui Foods Ltd** [1997] 3 NZLR 107. That case concerned registered user agreements pertaining to trade marks. The relevant clauses in the registered user agreements read as follows:

*14 These presents shall continue in force **without limit of period** subject to termination in accordance with the provisions hereof.*

15 The proprietor shall be entitled by notice in writing to the user forthwith to terminate these presents in any of the following events:

(i) If the user shall commit or allow to be committed any breach of the undertakings and conditions herein contained and on its part to be performed and observed unless such breach shall be substantially remedied within one month after receipt of such notice.

(ii) If the user shall have a receiver appointed of its undertakings or assets or of any part thereof or shall make an assignment for the benefit of creditors or shall go into liquidation (otherwise than for the purpose of amalgamation or reconstruction) whether compulsory or voluntary and upon notice being given by the proprietor to the user as aforesaid these presents and all rights of the user herein shall forthwith cease and determine. [Emphasis added.]

The issue there was whether the agreements were terminable on reasonable notice. In the High Court (Commercial List) of Auckland, Penlington J held firstly that merely because the agreement was unspecified as to duration, it did not mean that the parties intended that the agreement should be indefinite and therefore a right of termination was not precluded. Secondly, he held that the termination clauses in cl 15 did not preclude a term that the contract was terminable on reasonable notice. Finally, he held that the plaintiff in that case had discharged his burden of establishing that as a matter of construction or implication or both, the agreements contained a right for each contracting part to terminate on reasonable notice and in the absence of cause.

The instant appeal was distinguishable from **Anchor Butter**. The agreements in **Anchor Butter** were without any limit as to the period of the user; they were intended for an indefinite duration. In land law, where a licence to occupy a property is given for an indefinite period, such a licence is terminable at will: **Neo Hock Pheng v Teo Siew Peng** [1999] 2 SLR 45. This was noted by the judge in his grounds of decision at [para] 34. However, the judge found, and in our view correctly, that the deed created a licence for a definite period, that is, for the respondent`s lifetime. The express words of the deed were that the licence was to `lapse upon her death`. These words determined the duration of the licence and since the parties to the contract clearly expressed their intentions in the deed, the court would give effect to such intention.

Further, in **Anchor Butter**, the plaintiff established that as a matter of construction or implication or both, the agreements contained a right for each contracting party to terminate on reasonable notice and in the absence of any cause. However, in the present case, on the true construction of the terms of the deed a term allowing for termination by notice could not be implied. An implication of such a term would be plainly against the express words of the deed.

Conclusion

In our judgment, the deed allowed for the termination of the licence only upon the death of the respondent or upon a breach by the respondent of any of the covenants contained therein. In the absence of any express provision providing for termination by notice, and in the absence of any evidence which established that such a term should be implied, the licence as provided by the deed was to last for the lifetime of the respondent and was not revocable at will by notice and without cause. In the result, we dismissed this appeal.

Outcome:

Appeal dismissed.

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