

Colonial Treasurer Incorporated

Appellant

v.

Fook Hong Enterprises Company Limited

Respondent

FROM

THE COURT OF APPEAL OF HONG KONG

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 3RD FEBRUARY 1986

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*Present at the Hearing:*

LORD KEITH OF KINKEL  
LORD BRIDGE OF HARWICH  
LORD BRIGHTMAN  
SIR DENYS BUCKLEY

*[Delivered by Lord Keith of Kinkel]*

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This appeal from the Court of Appeal in Hong Kong raises a short point on the proper construction of section 50(10) of the Landlord and Tenant (Consolidation) Ordinance [Cap. 7], ("the Consolidation Ordinance") as amended by the Ordinance No. 29 of 1983.

Section 50 appears in Part II of the Consolidation Ordinance, being a Part which provides for security of tenure and control of rent in respect of tenancies of post-war domestic premises. Part II originally applied to almost all tenancies of such premises, but a process of relaxation of control was initiated by the Ordinance No. 52 of 1981. That Ordinance excluded from the protection of Part II premises the rateable value of which at 19th December 1981 was \$80,000 or more. A certain degree of security of tenure continued to be available under Part IV of the Consolidation Ordinance, but there ceased to be any upper limit upon the rent which the landlord could legally charge for such premises. The figure of \$80,000 was later reduced to \$60,000 with effect from 19th December 1982, and by the Ordinance No. 29 of 1983 a further reduction to \$50,000 was brought about with effect from 19th December 1983. That Ordinance amended the Consolidation Ordinance in various ways, and in particular introduced a new section 50(10) in these terms:

"(10) Subject to sub-section (12), for the purposes of this section, the rateable value of any premises shall be:-

- (a) in the case of premises being a tenement included in the valuation list declared in March 1977 under section 13 of the Rating Ordinance as amended or altered from time to time up to and including 10th June 1983, the rateable value contained in that list on 10th June 1983; and
- (b) in any other case, the rateable value certified by the Commissioner for the purposes of this section and that certificate shall be final and binding."

Section 50(6)(m), as amended, provides that Part II of the Consolidation Ordinance shall not apply to a tenancy or sub-tenancy of premises the rateable value of which is not less than \$50,000 or such other sum as the Legislative Council by resolution determines. Sub-section (12) of section 50 is not material for present purposes. "The Commissioner" means the Commissioner of Rating and Valuation.

The facts of the present case are as follows.

The respondent company, ("the company"), is the owner of a block of 60 flats in Victoria Road, Hong Kong, of which the appellant, The Colonial Treasurer Incorporated, is the tenant, having originally become such in August 1977 under a lease for five years. On its expiry the appellant became a statutory tenant. The flats are occupied by public servants by virtue of their employment. The flats were originally not liable for assessment to rates, nor were any rates paid on them, by virtue of an immunity conferred on the appellant by the Rating Ordinance [Cap. 116]. The immunity from assessment to rates was terminated by Ordinance with effect from 1st July 1981, but it remained the position that no rates were actually payable. Thereafter the Commissioner prepared interim valuations for all 60 flats and duly served notice on the company on 7th July 1982. He proposed that two penthouses included in the flats should each be valued at \$43,000, and the remainder at \$42,000 each. No objection being open or having been received, the Commissioner amended the valuation list (which had last been declared in March 1977) by entering the flats in it at the values he had proposed, with effect from 1st July 1981.

On 28th March 1983 the company served on the Commissioner, pursuant to section 37 of the Rating Ordinance, proposals that the rateable value of each of the flats should be increased to over \$70,000. By virtue of section 37 a proposal for alteration of the

valuation list can only be made in March of any year, so the Company could not have acted earlier. The object of course, was to secure if possible, that the rateable values of the flats were raised to such a level as to attract exemption from rent control. The Commissioner considered the company's proposals and on 6th June 1983 issued a notice of decision increasing the rateable values of the two penthouses to \$49,800 each and those of the remaining flats to \$48,600 each. The company appealed to the Lands Tribunal against that decision, and on 5th November 1983 the Lands Tribunal allowed the appeal to the effect of increasing the rateable values of the two penthouses to \$67,200 each and those of the remaining flats to \$66,000 each, being figures above the statutory limit for rent control. Further, the Tribunal directed the Collector of Rates to amend the valuation list accordingly with effect from 1st April 1983. In Hong Kong the rating year runs from 1st April in each year to 31st March in the following year.

On 31st January 1984 the company served the appellant with a notice of termination of tenancy pursuant to section 119(1) of the Consolidation Ordinance. The appellant thereupon took out an originating summons seeking declarations, first, that the decision of the Lands Tribunal being dated after 10th June 1983, could not affect the rateable values of the flats for the purposes of section 50(10) of the Consolidation Ordinance, and second, that the tenancy of the flats was a tenancy controlled by Part II of that Ordinance and not by Part IV. In the Supreme Court of Hong Kong Rhind J. gave judgment granting the declarations sought, but on appeal by the company that judgment was reversed by the Court of Appeal (Sir Alan Huggins V.-P., Cons and Fuad JJ.A.). The appellant now appeals, with leave of that Court, to Her Majesty in Council.

The appellant's argument is quite simply that the amended version of section 50(10)(a) of the Consolidation Ordinance requires attention to be directed solely to the figure of rateable value appearing in the valuation list for the particular tenement on 10th June 1983. On that date the decision of the Lands Tribunal had not yet been given, so the figure appearing in the list for each of the flats must necessarily have been below the critical limit of \$50,000, even if the Commissioner's decision of 6th June 1983 had been given effect to by alteration of the list in accordance with it. Therefore section 50(6)(m) could not apply so as to exclude the flats from the protection of Part II of the Ordinance. It was maintained that whatever might be the effect for rating purposes of a decision given later than 10th June 1983, it was the figure actually in the list on that date which was critical for

purposes of the application or otherwise of Part II. It was further contended that any other result would have undesirable consequences in that the status of a tenement for rent control purpose would remain in a state of uncertainty pending the final disposal of all appeal procedures on the question of its rateable value. Some support was also sought to be derived from the circumstance that no provision was made in the sub-section for appeal against a certificate of the Commissioner issued under paragraph (b) of section 50(10).

Rhind J. regarded the appellant's primary argument as overwhelming. He said:-

"If plain English is to be given its ordinary straight-forward meaning, there is no conceivable way in which the new sub-section (10) of Section 50 can be interpreted to the effect that judgments dated later than 10th June 1983 can affect rateable values for the purposes of section 50. I fail to see how the words 'the rateable value contained in that list on 10th June 1983' can mean anything different from what they say. A rateable value fixed by the Lands Tribunal on the 5th November 1983 simply could not be contained in the list on the 10th June 1983. I do not wish to labour the obvious."

The Court of Appeal, on the other hand, was not attracted by this simple approach. Sir Alan Huggins, who delivered the leading judgment with which the other members of the court agreed, was of opinion that by virtue of the decision of the Lands Tribunal the figure which appeared in the valuation list on 10th June 1983 never was an effective rateable value at all. He was also impressed by the consideration that the appellant's argument logically involved that an erroneous figure resulting from a clerical error, which was not corrected (in pursuance of section 16 of the Rating Ordinance) till after 10th June 1983, would necessarily fix the status of the tenement for purposes of rent control, although the judgment records a concession, or perhaps more correctly, a submission by counsel for the appellant, that a tenant would not be entitled to take advantage of such a situation.

Their Lordships prefer the view taken by the Court of Appeal. As already observed, the rating year in Hong Kong runs from 1st April to the following 31st March. Under section 37(1)(a) of the Rating Ordinance a person aggrieved on the ground that a tenement included in the valuation list has been valued below its proper rateable value, as the company was in the present case, may, within the month of March in any year, serve a proposal on the Commissioner for the alteration of the valuation list for the next

following year, i.e. the year from 1st April. This must plainly mean an alteration for the whole of the next following year. Until such time as the proposal has been finally disposed of, which may involve a determination upon an appeal to the Lands Tribunal under section 42 of the Rating Ordinance, the figure of rateable value for the time being shown for the tenement in the valuation list cannot be a final and effective rateable value. If the proposal is eventually disposed of in favour of the aggrieved party, the decision upon it fixes the effective rateable value for the whole of the year from 1st April. That rateable value comes to be the rateable value contained in the list for every day of that year, including 10th June. It matters not what period of time elapses before the proposal is finally disposed of. Even if that does not occur until after the end of the relevant year, the situation in law that comes about is that the figure which originally appeared in the valuation list, of which complaint is made, never was the rateable value of the tenement for the relevant year or any part of it.

Their Lordships do not find any difficulty in the words "as amended or altered from time to time up to and including 10th June 1983" which appears in paragraph (a) of section 50(10). These words form part of the description of a particular category of tenements. The valuation list may be altered under section 38(4), or section 39(6), to the effect of including in it a tenement which has been wrongly omitted following a proposal under section 37(1)(c). The valuation list may also be amended under section 26(3), following an interim valuation made by the Commissioner under section 25 of a tenement not included in the valuation list but which is liable for rates, to the effect of including the tenement so valued in the roll. It appears to their Lordships that these are the cases contemplated by the quoted words in paragraph (a) of section 50(10). So their presence does not cast any light on the question whether the concluding words of the paragraph contemplate a figure of rateable value which never becomes the effective rateable value for purposes of the Rating Ordinance, or the figure of rateable value which does become effective for those purposes.

For these reasons, which are in substance those principally favoured by the Court of Appeal, their Lordships will humbly advise Her Majesty that the appeal should be dismissed with costs.

