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1. *Plato-Straits Heritage Sdn Bhd v Persatuan Char Yong Selangor dan Wilayah Persekutuan Melalui Yong Pock Yau (mengambil tindakan sebagai Pengerusi Selaku Pegawai Awam Bagi Persatuan Char Yong Selangor dan Wilayah Persekutuan) [2024] MLJU 565*

**Client/Matter:** -None-

**Search Terms:** plato-straits heritage sdn bhd v persatuan char yong selangor dan wilayah persekutuan melalui yong pock yau (mengambil tindakan sebagai pengerusi selaku pegawai awam bagi persatuan char yong selangor dan wilayah persekutuan) - [2024] mlju 565

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| Content Type | Narrowed by |
|---|---|
| MY Cases | -None- |

# *Plato-Straits Heritage Sdn Bhd v Persatuan Char Yong Selangor dan Wilayah Persekutuan Melalui Yong Pock Yau (mengambil tindakan sebagai Pengerusi Selaku Pegawai Awam Bagi Persatuan Char Yong Selangor dan Wilayah Persekutuan) [2024] MLJU 565*

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

LEONG WAI HONG JC

APPEAL SUIT NO WA-12ANCvC-104-07 OF 2023

20 March 2024

*Hari Krishnan (with Vivegarubani) (J Hari Vivega) for the appellant.*
*Yip Huen Weng (with Ngeow Chow Ying and Ngo Jun Yan) (Ngeow & Tan) for the respondent.*

## Leong Wai Hong JC:

**Judgment**

**Introduction**

**[1]** This appeal deals with a short legal point. But it is an important point for the respondent and appellant in this appeal who are the landlord and tenant of a lease respectively. I shall hereafter refer to the appellant as the tenant and the respondent as the landlord.

**[2]** The point concerns the construction of Clause 9 of a Lease Agreement between the landlord and the tenant which reads as follows -

> *"**If the rent reserved under the terms of this New Lease or any part thereof shall be in arrears for thirty (30) days after becoming payable (whether formally demanded or not)** or if the Lease shall go into liquidation, whether compulsory or voluntary other than for the purpose of reconstruction or amalgamation, or if execution shall be levied upon the goods of the Lessee at the said lands and Building or any part thereof, **or if the Lessee shall commit any breach of any of the conditions or provisions contained in this Lease and such breach be not remedied within thirty (30) days after receipt of a notice in writing from the Lessor requesting such breach be remedied, then and in any of such cases the Lessor may re-enter upon the said Lands** and building or any part thereof in the name of the whole and thereupon this New Lease shall be determined but without prejudice to any remedy of the Lessor for any claims for damages for any antecedent breach by the Lessee for any provisions or covenants contained in this New Lease.*
>
> [See Enclosure 38 Record of Appeal Part C page 164]
>
> [Emphasis added]

**[3]** The Sessions Court has allowed the landlord's application for the determination of the suit on a preliminary issue and/or question of law pursuant to Order 33 Rule 2 of the Rules of Court 2012.

**[4]** The Sessions Court in an order held that -

i. The preliminary issue and/or question of law, namely -

> "Whether clause 9 of the Lease of Building and Land Agreement dated 05-10-2011 ("Lease Agreement") requires a 30-day notice when/if the defendant fails to pay the rental as agreed under the terms of the Lease Agreement?"

is answered in the negative;

ii. Allowed a judgment granting the plaintiff's claims in the Statement of Claim against the defendant.

**[5]** In the appeal before me on 11-01-2024 counsel for the tenant informed me that he has only one point for this appeal. He contends Clause 9 should be interpreted in the positive. I requested both counsel to do more research to find cases which have determined a similar clause. Thereafter parties filed further written submissions.

**[6]** I dismissed the appeal on 12-03-2024 with costs of RM 10,000 subject to allocatur. The tenant has appealed to the Court of Appeal on 13-03-2024. These are my Grounds of Decision.

**[7]** Before I proceed further I would like to remind counsel to be more careful when reproducing terms of any clause that they require the Court to construe. It will not do to omit certain words through sheer carelessness. It behoves counsel and his junior to double check line by line any clause set out in the written submissions which is represented to the Court as a faithful reproduction of the said clause.

**[8]** In the instant case, the tenant's further submissions in Enclosure 46 has reproduced clause 9 inaccurately. Words were omitted.

**The appeal before me**

**[9]** Clause 9 is best construed if I break up the clause into parts [i] to [v] as follows –

i. *"**If the rent reserved under the terms of this New Lease or any part thereof shall be in arrears for thirty (30) days after becoming payable (whether formally demanded or not)** or*

ii. *if the Lease shall go into liquidation, whether compulsory or voluntary other than for the purpose of reconstruction or amalgamation, or*

iii. *if execution shall be levied upon the goods of the Lessee at the said lands and Building or any part thereof, **or***

iv. *if the Lessee shall commit **any breach** of any of the conditions or provisions contained in this Lease and **such breach** be not remedied within thirty (30) days after receipt of a notice in writing from the Lessor requesting **such breach** be remedied,*

v. ***then and in any of such cases the Lessor may re-enter upon the said Lands** and building or any part thereof in the name of the whole and thereupon this New Lease shall be determined but without prejudice to any remedy of the Lessor for any claims for damages for any antecedent breach by the Lessee for any provisions or covenants contained in this New Lease.*

**[10]** Analysed in this way, it is clear a 30-day notice to remedy is only applicable "*if the Lessee shall commit any breach of any of the conditions or provisions contained in this Lease".* This is because the 30-day notice which follows thereafter refers to the phrase *"such breach"* twice.

**The presence of the conjunction "or" must mean that the events must be read disjunctively, and not conjunctively**

**[11]** The Courts have also consistently held that the presence of the conjunction "or" between each of the events set out under a clause must mean that the events must be read disjunctively, and not conjunctively. [See *Mary Colete John v South East Asia Insurance Bhd* [2010] 6 MLJ 733 FC and *Malaysia Building Society Bhd v KCSB Konsortium Sdn Bhd* [2017] 2 MLJ 557 FC].

**[12]** In *Mary Colete John v South East Asia Insurance Bhd* [2010] 6 MLJ 733 the Federal Court said -

> [22] *In the Union Insurance case the judgment of Abdul Malek JCA also gave approbation to the interpretation of the word 'or' adopted by the High Court judge in the following terms:*
>
> > ***With the word 'or' in the words** 'by reason of or in pursuance of a contract of employment' means, to the learned High Court judge, that **it should be read disjunctively. To read it conjunctively, he emphasised, would be doing violence to the word 'or'**.*
>
> (Emphasis added)

**[13]** In *Malaysia Building Society Bhd v KCSB Konsortium Sdn Bhd* [2017] 2 MLJ 557 the Federal court said -

*We agree with Haidar J that* ***because of the conjunctive 'or' appearing between the words*** *'insufficient' and 'void' in* s 340(2)(b) of the NLC*, therefore,* ***the two words must be read disjunctively and not conjunctively****. So any title or interest is not indefeasible if it was obtained by means of either an 'insufficient' or 'void' instrument...*

*[Emphasis added]*

**Decision**

**[14]** For the reasons stated above, the appeal is dismissed with costs of RM 10,000 subject to allocatur.

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