

[1988–90 Gib LR 100]

**METHARAM HUNDAMAL LIMITED v. UNIVERSAL
TRADERS LIMITED**

SUPREME COURT (Kneller, C.J.): October 6th, 1988

Landlord and Tenant—possession—notice to quit—business tenancy—extension to notice period provided by Landlord and Tenant Ordinance, s.77, not to be construed cumulatively with statutory notice period given in Schedule 5, para. 2—3-month extension provided in s.77 to preserve status quo while unsuccessful party decides whether to appeal—provisions of Ordinance to be construed strictly due to serious incursion made into landlords' contractual rights

The plaintiff applied for an order determining the date on which its tenancy of business premises came to an end.

The defendant had leased business premises to the plaintiff in July 1984. In March 1986, it served the plaintiff with a notice to quit on September 30th, 1986, claiming that it needed the premises for the purposes of its own business. The plaintiff, in response, applied for a renewal of its tenancy, proposing a five-year term. The defendant maintained that it needed the premises for its business, but proposed, in the event that the court granted a new tenancy, that the term of the lease be five years, with a rent review after three years. In June 1987, both parties consented to an order that the proceedings be stayed, that the plaintiff surrender the premises at the end of the current tenancy, and that the defendant pay the plaintiff £3,000.

The plaintiff submitted that (a) the original notice to quit had been of no effect; (b) the date on which the application for a new tenancy had been disposed of was June 11th, 1987, the date of the order by consent, and s.77 of the Landlord and Tenant Ordinance provided for a 3-month extension to the lease from this date; and (c) the 15-month extension provided for by para. 2 of Schedule 5 to the Ordinance should be taken as running from the end of the 3-month period, resulting in the tenancy ending on December 11th, 1988.

The defendant submitted in reply that (a) the original notice to quit was effective, as it had provided an adequate period of notice as specified in s.44 of the Ordinance; (b) the 15-month period should be taken as running from the date specified in the original notice to quit, with the result that it would end on December 31st, 1987; and (c) it should therefore be paid mesne profits, rather than rent, from January 1st, 1988.

SUPREME CT. HUNDAMAL V. UNIVERSAL TRADERS (Kneller, C.J.)

Held, making the following order:

The defendant landlord was correct in asserting that the tenancy terminated on December 31st, 1987. The original notice to quit had been effective, with the result that the 15-month extension period ran from the date specified in that original notice. The 3-month extension from the date of disposal of the application was provided in order to preserve the *status quo* so that the unsuccessful party could decide whether or not to appeal. The Ordinance's provisions were to be construed strictly, given the serious inroads that they made into the landlord's contractual rights and the provisions of ss. 43, 49 and 77 and Schedule 5 were therefore not to be construed cumulatively (paras. 11–14).

Case cited:

(1) *Herro Traders Ltd. v. Sheraton Ltd.*, Supreme Ct., (1986 H 80), November 21st, 1986, unreported, applied.

Legislation construed:

Landlord and Tenant Ordinance (1984 Edition), s.77: The relevant terms of this section are set out at para. 7.

Schedule 5, para. 2: The relevant terms of this paragraph are set out at para. 5.

A.A. Vasquez for the plaintiff;

H.K. Budhrani for the defendant.

1 **KNELLER, C.J.:** Upon what date did or does Metharam Hundamal Ltd.'s tenancy come to end? The tenancy is of a storeroom at 125 Main Street which Hundamal has occupied on a monthly tenancy at rent of £50 per month since July 1st, 1984. Hundamal finds the storeroom useful for its retail shop at 119 Main Street, where it trades as "Pepe Indio."

2 The landlord is Universal Traders Ltd. which, on March 25th, 1986, served Hundamal with a notice to quit the storeroom on September 30th, 1986. Hundamal did not wish to give up possession on that date or any other, so on April 22nd, 1986 it served a notice to this effect on Universal, and applied for a renewal of its tenancy. Hundamal proposed, instead, that its new tenancy should be for five years from the end of its current tenancy, that the rent should be the market rent, and that all its other terms should be as they were before.

3 Universal rejected all that, saying that it wanted to occupy the storeroom for the purposes of a business carried on by itself, but, if it failed in its purpose, Universal suggested an amendment to Hundamal's terms for a new lease, namely, that it be for five years but with a revision of rent after the first three years.

4 On June 11th, 1987, the parties consented to an order that (a) all proceedings on the originating summons be stayed; (b) Hundamal should

deliver up the storeroom on the date upon which the current tenancy ended and, in default of agreement as to that date, the parties were at liberty to apply to a judge in chambers to determine it; and (c) Universal should pay Hundamal £3,000 when Hundamal quits the storeroom.

5 Schedule 5 of the Landlord and Tenant Ordinance is headed “Recovery of Business Premises”; para. 2 reads thus:

“Where a landlord opposes an application for the grant of a new tenancy on any ground specified in paragraph (d) or paragraph (e) section 49(1)—

- (a) in the case where the landlord under section 44(2) has given notice, notwithstanding any other provision in this Ordinance, the current tenancy shall not come to an end before the appropriate period, specified in the second column of the Table to this paragraph, immediately following the date of termination of the tenancy . . .”

6 Here, the landlord, Universal, in fact opposed the application of Hundamal for a new tenancy on the ground that on the termination of the present tenancy it intended to occupy the holding for the purposes of a business to be carried on by it. That is the ground given in s.49(1)(e) of the Ordinance. Moving now to the table in para. 2 of Schedule 5, and its second column, which gives an appropriate period for extending the current tenancy, Mr. Budhrani for Universal puts the date of expiry of the extended tenancy at 15 months after the date of termination in the notice. The date of termination in the notice was September 30th, 1986. So the 15-month extension would bring the date to December 31st, 1987. From January 1st, 1988, Universal would claim mesne profits rather than rent, and that was the point of this exercise.

7 Mr. Vasquez for Hundamal submitted that the notice to quit which fixed the date for Hundamal to give up possession as September 30th, 1986 had no effect. It was, he suggested, a notice without force. Then he turned to s.77 of the Ordinance, which provides that—

“(1) Notwithstanding any other provisions of this Ordinance, in any case where—

- (a) a notice to terminate a tenancy has been given under Part III or Part IV or a request for a new tenancy has been made under Part IV; and
- (b) an application to a court has been made under Part III or Part IV, as the case may be; and
- (c) apart from this section, the effect of the notice or request would be to terminate the tenancy before the expiration of

SUPREME CT. HUNDAMAL V. UNIVERSAL TRADERS (Kneller, C.J.)

the period of 3 months beginning with the date on which the application is finally disposed of—

the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of 3 months and not at any other time.

(2) The reference in paragraph (c) of subsection (1) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.”

8 Mr. Vasquez explained that once the application was disposed of, the notice to quit did not take effect for yet another three months, so that the aggrieved party could decide what to do. Thus, he pointed out, the date of the consent judgment being June 11th, 1987, the extra three months under s.77 carried the date of the termination of the current tenancy on to September 11th, 1987; the 15-month extension under Schedule 5, para. 2(a) of the Ordinance made the current tenancy end on December 11th, 1988.

9 I reach the answer to the issue this way. Universal wanted this store back because it intended to occupy it for the purposes of its business to be carried on in it. Universal had to terminate Hundamal’s tenancy by notice in the prescribed form specifying the date of termination. And that notice does not have effect unless it is given within the time specified in Schedule 5. The appropriate period of notice is not more than 12 months and not less than 6 months, as provided in s.44(1)–(2) of the Ordinance. Universal gave 6 months’ notice to quit to Hundamal.

10 But because Hundamal had been the tenant in occupation for more than 7 years, but not more than 10 years, another 15 months had to elapse from the date given in the notice before Hundamal’s tenancy terminated: Schedule 5, para. 2(a), and the table in para. 2. Add 15 months to September 30th, 1986, and the date becomes December 31st, 1987.

11 However, notwithstanding the other provisions of the Ordinance, since this is a case in which notice to terminate a tenancy has been given under Part IV and an application under Part IV for a new tenancy has been made, the effect of the notice or request is to terminate Hundamal’s tenancy at the expiration of three months beginning with the date on which the application is finally disposed of (Landlord and Tenant Ordinance, s.77). The application was finally disposed of on June 11th, 1987 by the consent judgment. Add three months, and the effect of the notice or

THE GIBRALTAR LAW REPORTS

1988–90 Gib LR

request is that the tenancy is terminated on September 12th, 1987. But that is overridden by the fact that the tenancy is terminated at the end of 15 months from the date at the end of the 6-month period in the notice to quit, which is September 30th, 1987.

12 The 3-month extension from the date of the disposal of the application is to preserve the *status quo* while the unsuccessful party decides whether or not to appeal, but there is nothing in the Ordinance to suggest that it is to be added on to the date of the termination of the tenancy as extended by Schedule 5. The provisions of ss. 43, 49 and 77 and Schedule 5 are not cumulative.

13 The object of the Ordinance is to regulate the relationship between landlord and tenant. Amongst other things, it protects the tenant, and in so doing makes serious inroads into the landlord's common law contractual rights. So it should be strictly construed: *Herro Traders Ltd. v. Sheraton Ltd.* (1).

14 The answer to the issue is that Hundamal's tenancy terminated on December 31st, 1987. I declare that to be so. The costs of this application must be paid by Hundamal to Universal.

Order accordingly.