[1988–90 Gib LR 188]

A.J. VASQUEZ LIMITED v. RENT TRIBUNAL

SUPREME COURT (Alcantara, A.J.): October 25th, 1989

Landlord and Tenant—rent—rent control—application for decontrol of premises to be made by landlord—no requirement that alterations be ordered or effected by landlord if sufficiently extensive for control to be lifted if landlord consents—Rent Tribunal retains discretion to refuse decontrol if landlord's behaviour unconscionable, e.g. if tenant misled as to effect of alterations

Landlord and Tenant—repair, fitness and alteration—landlord's consent—landlord's consent to structural alterations to be carried out by tenant sufficient for lifting of rent control if alterations sufficiently extensive for control to be lifted—no requirement that works be ordered or effected by landlord—Rent Tribunal retains discretion to refuse decontrol if landlord's behaviour unconscionable, e.g. if tenant misled as to effect of alterations

The appellant sought the removal of rent control from premises of which he was the landlord.

The tenant of the premises, with the landlord's agreement, sought and obtained building permission to convert the premises into two separate, self-contained units. The parties agreed that the tenant would remain in one of the units and that her nephew would be granted a lease of the other. The landlord agreed to protect the two tenants' rent and security of tenure, as the parties envisaged that the alterations would or might result in the decontrolling of the premises. The work was carried out in April 1986 and,

in December 1986, the landlord applied to the Rent Tribunal to have the units decontrolled. His application was refused on the ground that he had not carried out (or arranged for) the work himself.

The appellant submitted that (a) the Rent Tribunal had erred in law in holding that structural alterations had to be carried out by the landlord in order for rent controls to be lifted, as nowhere in the Landlord and Tenant Ordinance, s.22 was this requirement set out; and (b) authority on the point—which related to the nature of the alterations, rather than who had arranged for them to be carried out—could be distinguished.

The respondent submitted in reply that (a) the only issue was whether the works had to be carried out by the landlord, but (b) the Rent Tribunal had a discretion as to whether to decontrol the premises.

Held, allowing the appeal:

(1) While the application for decontrol had to be made by the landlord, there was no requirement that the works be carried out or ordered by him in order for rent controls to be lifted: such a requirement was not stated anywhere in s.22 of the Ordinance. The legal question at issue was whether alterations to premises were sufficiently extensive for them to be decontrolled, rather than who had ordered them to be carried out: there was no reason why—provided that the landlord was a party to the alterations by consenting to them and that the tenant had not been misled—a landlord might not be able to fulfil the requirements of s.22(1) even if he had not personally executed or ordered the alterations (para. 10).

(2) The situation might be different in cases where a landlord had behaved unfairly, for example by misleading his tenant as to whether he would seek the lifting of rent controls: the Rent Tribunal should retain a power to refuse to lift rent controls where a landlord had behaved unconscionably in this regard. Here, however, the tenant had not been misled—indeed, she had supported the landlord's application—so the question of whether the word "may" in s.22 conferred a discretion on the Rent Tribunal did not fall to be answered (paras. 10–12).

Cases cited:

(1) *Att.-Gen.* v. *Vernazza*, [1960] A.C. 965; [1960] 3 W.L.R. 218; [1960] 3 All E.R. 97, applied.

(2) *International Properties (Gib.) Ltd.* v. *Rent Tribunal*, 1988–90 Gib LR 52, distinguished.

(3) *Khiani* v. *Rent Tribunal*, Supreme Ct., January 29th, 1988, unreported, referred to.

(4) *Marchbank* v. *Campbell*, [1923] 1 K.B. 245; [1922] All E.R. Rep. 358; (1922), 21 L.G.R. 90; 92 L.J.K.B. 137; 67 Sol. Jo. 184, *dicta* of Salter, J. referred to.

Legislation construed:

Landlord and Tenant Ordinance (1984 Edition), s.22: The relevant terms of this section are set out at para. 3.

M. Isola for the appellant;
D. Robinson for the respondent.

1 **ALCANTARA, A.J.:** This is an appeal by a landlord against the refusal of the Rent Tribunal to decontrol certain residential accommodation at Nos. 4 and 4A Lynch's Lane.

2 The appellant is and was the landlord of the above premises, which were rent-controlled. The tenant was a Miss A. Lavagna. The tenant, in agreement with the landlord, applied and obtained building permission to carry out extensive alterations to the premises that she was occupying and to convert the same into two separate self-contained units. Part of the said agreement with the landlord was that her nephew, Mr. Hoare, would become the tenant of one of the converted units (No. 4A) and that she, Miss Lavagna, would remain the tenant of the other unit (No. 4). Because it was envisaged that, due to the structural alterations that were going to take place, the new premises would or might become decontrolled, it was agreed by the landlord that the two tenants would be protected contractually as to rent and security of tenure.

3 The conversion of No. 4 Lynch's Lane into Nos. 4 and 4A took place in April 1986, when the works were completed. On December 19th, 1986, the landlord applied to the Rent Tribunal to have the two units decontrolled under the provisions of s.22 of the Landlord and Tenant Ordinance. Section 22 has since been amended, but for the purposes of this appeal I have to look at it at the time when the Rent Tribunal arrived at its decision: *Att.-Gen.* v. *Vernazza* (1). Section 22 of the Ordinance reads:

> "(1) Where, on application by the landlord of a dwellinghouse to which this Part applies, the Rent Tribunal is satisfied that—
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> (a) structural alterations have been carried out, or are to be carried out, to the dwellinghouse on or after the commencement of this Ordinance; and
>
> (b) the bona fida [*sic*] effect of the structural alterations is or will be, when carried out, to reconstruct the dwellinghouse either—
>
> (i) into a unit that is substantially a larger unit than it was before the alterations; or
>
> (ii) into 2 or more separate, self-contained flats; and
>
> (c) the structural alterations do not or will not, when they are carried out, have the effect of decreasing the overall housing stock; and
>
> (d) no undue hardship will be caused to any tenant of the dwellinghouse by the structural alterations—

> the Rent Tribunal may make an order declaring that this Part shall not apply to the dwellinghouse or to any separate and self-contained units resulting from the structural alterations."

4 For reasons that I have not been made aware of, the hearing did not take place until August 3rd, 1988. It was part-heard, and adjourned until February 23rd, 1989. A decision was given on March 14th, 1989. The decision is contained in a letter from the Chairman of the Rent Tribunal, the relevant part of which reads:

> "The plans of the premises submitted in support of the application established that one flat in the occupation of Miss Lavagna had been converted, at the expense of Mr. Victor Hoare, with the landlord's consent, into two self-contained flats, the said Mr. Hoare occupying one of the flats and Miss Lavagna the other flat.
>
> It having been established that the landlords did not carry out the requirements of the said section and considering the remarks of the Chief Justice in his judgment in *International Props. (Gib.) Ltd.* v. *Rent Tribunal* [the Tribunal] considers that the said Section 22 has not been complied with and decides that the decontrol applied for cannot be granted."

5 Should there be any ambiguity as to what the Chairman meant when he said that the landlords had not carried out the requirements of the section, it is dispelled when you look at the minutes of the proceedings:

> "Mr. Russo said that the main issue was to establish whether it was the landlord who had to carry out works or the tenants . . . Mr. Russo pointed out that structural alterations should be carried out by the landlord."

6 Mr. Isola, in a very well-prepared appeal, has ably and forcibly argued that the Rent Tribunal erred in law in coming to the conclusion that the structural alterations must be carried out by the landlord in order to satisfy the requirement of s.22(1)(a) of the Landlord and Tenant Ordinance. Mr. Robinson concurs that the only issue before me is whether the works must be carried out by the landlord.

7 Mr. Isola, quoting from various passages in *Maxwell on the Interpretation of Statutes*, 11th ed. (1962) submits that the words of the sub-section are precise and unambiguous and that the need for statutory interpretation does not arise. Nowhere in the sub-section does it say that the structural alterations have to be carried out by the landlord.

8 I agree with counsel that the application for decontrol must be made by the landlord. Provided that he proves to the satisfaction of the Rent Tribunal that the requirements set out in s.22(1)(a)–(d) have been fulfilled,

an order for decontrol may be made. I will revert at the end of this judgment to this question of "may."

9 In my opinion the Rent Tribunal misdirected itself, unwittingly, in its reading of what the learned Chief Justice said in *International Properties (Gib.) Ltd.* v. *Rent Tribunal* (2). He cited with approval a passage from the judgment of Salter, J. in *Marchbank* v. *Campbell* (4) ([1923] 1 K.B. at 251):

> "One of the objects of the Act, so far as it deals with tenancy, is to promote the provision of dwellings. When a landlord, by enterprise and expenditure in altering and adapting a large house, has provided two or three decent and separate homes where only one existed before, it seems reasonable that he should be allowed to get what rent he can for the new dwelling houses thus created."

and added (1988–90 Gib LR 52, at para. 26): "And, in my judgment, so it should be and is here under the Ordinance."

10 I agree entirely with the views of the learned Chief Justice and do not for a moment dissent, but they have to be read in the context of the case with which he was dealing. In that case, the issue before the court was whether the structural alterations carried out by the landlord were more than minimal, not who had executed them. In adopting the quotation from Salter, J., the learned Chief Justice was not laying down a rule that the works of structural alterations had of necessity to be executed by the landlord. There is no reason why a landlord might not be able to satisfy the Rent Tribunal as to the requirements of s.22(1)(a) even if he himself has not personally executed or ordered the works or structural alterations, provided that he has been a party to them by consenting, and has not misled the tenant.

11 In this particular case, the tenant has not been misled. Quite the contrary: at the hearing before the Rent Tribunal, the tenant supported the landlord's application for decontrol.

12 In the case of *International Properties (Gib.) Ltd.* v. *Rent Tribunal* (2), the learned Chief Justice declined to decide whether "may" in s.22(1) meant "shall," but was inclined to agree with counsel in that case that such was the meaning. In a previous case, *Khiani* v. *Rent Tribunal* (3), I had also left the matter open. I will still leave it open, as it does not arise directly in this appeal, but it appears to me that the Rent Tribunal should have a residuary power to refuse to decontrol where a landlord has behaved in an unconscionable and unfair manner, notwithstanding that the landlord is able to satisfy the Rent Tribunal as to the strict letter of the law. If "may" means "may," the residuary power is there.

Appeal allowed.