

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. P – 02 – 875 – 2006**

ANTARA

1. MHM TREND STATION SDN BHD
(555131-T)
2. MD HAMID MERICAN BIN ABDUL
KADER MERICAN
(No. K/P: 46027-07-5411)
3. MUNAWAR HAMID MERICAN
(No. K/P: 770223-07-5319)
(Berniaga sebagai MHM Trading
Trend Station (PG0116978-P)

... PERAYU-
PERAYU

DAN

PETRONAS DAGANGAN BERHAD (88222-D)

RESPONDEN

(Dalam Perkara Kes Mahkamah Tinggi Malaya Di Pulau Pinang
Guaman Sivil No. 22-784-2005

Antara

1. MHM Trend Station Sdn Bhd (555131-T)
2. Md Hamid Merican bin Abdul Kader Merican
(No. K/P: 46027-07-5411)
3. Munawar Hamid Merican
(No. K/P: 770223-07-5319)
(Berniaga sebagai MHM Trading Trend
Station (PG0116978-P)

... Plaintiff-
Plaintif

Dan

Petronas Dagangan Berhad (88222-D)

... Defendan)

Coram: Gopal Sri Ram, F.C.J.
(sitting as a Judge of the Court of Appeal)
Sulong Matjeraie, J.C.A.
Ahmad bin Haji Maarop, J.C.A.

ORAL JUDGMENT

Gopal Sri Ram, F.C.J. delivering judgment:

1. This is the judgment of the Court.
2. This appeal is directed against the order of High Court of Penang refusing the appellant an injunction to restrain the respondent from retaking possession of a petrol station from the appellant. The parties to this litigation had entered into a dealership agreement. Under the terms of that agreement the respondent granted the appellant a licence "to enter upon and operate" the petrol station in question. The licence was subject to several conditions. It is the case for the respondent that the appellant breached several terms set out in the dealership agreement. Particulars of the breaches were provided by the respondent to the appellant in a letter dated 6 December 2005.
3. The only issue before us is whether the respondent is entitled to enter upon and retake possession of the petrol station in question without an order of court in that behalf. At common law, where a licence is terminated, the licensee becomes a trespasser and the court in the exercise of its jurisdiction and acting on equitable principles will ordinarily refuse injunctive relief in such a case. If authority is required for this proposition you need look no further than **Tee Than Song v Caltex Oil Malaysia Ltd (1970) 1 MLJ 68**. But, says learned counsel for the appellant, that principle has been altered by statute. And he refers us to section 7 (2) of Specific Relief Act 1950. That subsection reads as follows:

“Where a specific immovable property has been let under a tenancy, and that tenancy is determined or has come to an end, but the occupier continues to remain in occupation of the property or part thereof, the person entitled to the possession of the property shall not enforce his right to recover it against the occupier otherwise than by proceedings in the court.”

Subsection 3 provides as follows

“In subsection (2) “occupier” means any person lawfully in occupation of the property or part thereof at the termination of the tenancy.”

4. Now the operative words in the second sub section of section 7 are “where a specific immovable property has been let under a tenancy”. It is plain that the subsection postulates, a letting, that is to say the creation of the relationship of landlord and tenant. In the absence of such a relationship the subsection does not bite. So, really speaking, the appellant has no answer whatsoever to the assertion by the respondent of its rights under the dealership agreement. In our judgment the common law position as explained in **Tee Than Song v Caltex Oil Malaysia Ltd (1970) 1 MLJ 68** applies with full force to the facts before us. It follows that the learned judge was entirely correct in refusing the injunction sought.

6. For the reasons already given, the appeal is dismissed. The appellant must pay the respondent the costs of this appeal. The

deposit in court shall be paid out to the respondent to account of its taxed costs. We affirm the orders made by the High Court.

Judgment delivered in Open Court at the conclusion of arguments on 27 April 2009.

Counsel for the appellant: Darshan Singh

Solicitors for the appellant: Tetuan Darshan Singh & Co.

Counsel for the respondent: Ahmad Fadzli Bin Abdul Salam

Solicitors for the respondent: Tetuan Mohd Akhir & Partners

Verified with Y.A. Gopal Sri Ram, F.C.J. and certified by me to be correct.