

Top Ten Entertainment Pte Ltd v Lucky Red Investments Ltd (by counterclaim)  
[2004] SGHC 40

**Case Number** : Suit 634/2002  
**Decision Date** : 25 February 2004  
**Tribunal/Court** : High Court  
**Coram** : Tay Yong Kwang J  
**Counsel Name(s)** : Michael Hwang SC and Ginny Chew (Allen and Gledhill) for plaintiff by counterclaim; Anthony Bevin Netto and S Maginthan (Netto Tan and S Magin), Peter Pang (Peter Pang and Co) for defendant by counterclaim  
**Parties** : Top Ten Entertainment Pte Ltd — Lucky Red Investments Ltd (by counterclaim)

*Landlord and Tenant – Agreements for leases – Whether landlord agreed to reduce rent payable by tenant during certain period of lease*

*Landlord and Tenant – Rent and service charges – Apportionment – Inclusion of unreasonably high hiring charge for furniture and fittings in rent – Whether tenancy agreement rendered illegal and unenforceable as fraud on revenue authority*

25 February 2004

**Tay Yong Kwang J:**

1 There were essentially two issues in this action. The first was a legal one: when rent for premises included a component for hiring charge for furniture and fittings and the hiring charge was unreasonably high, would the tenancy agreement be thereby rendered illegal and unenforceable as a fraud on the revenue authority? The second, a factual issue, related to whether the landlord here had agreed to reduce the rent payable between January and November 2000.

2 These proceedings concerned the commercial premises at 400 Orchard Road #04-35/36 and #05-18A Orchard Towers, Singapore, originally owned by Premier Theatre Pte Ltd. In 1986, Lucky Red Investments Ltd ("Lucky Red") purchased the premises from Premier Theatre Pte Ltd. Lucky Red, a company incorporated in Hong Kong, was effectively owned by Loi Kai Meng ("Loi"), a Singaporean. In March 2002, Leivest International Pte Ltd ("Leivest") became the owner of the premises pursuant to a sale and purchase agreement dated 12 December 2001. Top Ten Entertainment Pte Ltd ("Top Ten") became the tenant of the premises from 1 December 1984.

3 This action was commenced by Leivest against Top Ten for arrears of rent and for possession. Those claims have since been withdrawn. Top Ten in turn counterclaimed against Leivest, Lucky Red, Loi and his two children for various reliefs. The trial therefore started with Top Ten as the plaintiff by counterclaim. After some negotiations at the start of the trial, Top Ten discontinued its claim against Leivest and the Loises, leaving Lucky Red as the only defendant on record. Lucky Red had its own counterclaim against Top Ten for shortfall in the payment of rent and for contractual interest and costs.

**The case for Top Ten**

4 The premises were originally fitted out and used as a cinema. Top Ten first became the tenant of the premises between 1 December 1984 and 1 December 1987 pursuant to a lease dated 1 January 1985. The intention was to operate a discotheque on the premises. The monthly rent was \$32,000, out of which \$28,000 was the rent for the premises and \$4,000 was the hiring charge for the furniture and fittings listed in a schedule. The inventory in the schedule included an air-

conditioning plant, stage fittings, electrical fittings, furniture (such as a safe, cabinets, dressing table with 18 lockers, desks and chairs) and fire safety equipment.

5 A second lease for the period 1 December 1987 to 1 December 1990 was granted to Top Ten although the draft lease agreement was neither dated nor signed. The rent was apportioned as \$33,800 and \$4,600 respectively. The inventory remained essentially the same as in the first lease.

6 In the third lease dated 4 May 1990 for the period 1 December 1990 to 30 November 1993, the rent was apportioned as \$46,600 for rent of the premises and \$9,400 as the hiring charge for the things listed in the inventory. In June 1990, Top Ten's Managing Director, Peter Bader, told Loi that many of the items in the inventory were no longer on the premises. Loi then sent a fax to Top Ten to confirm that Lucky Red did not require the items crossed out in a copy of the inventory to be returned.

7 The fourth lease was for the period 1 December 1993 to 30 November 1994 with the rent apportioned as \$58,000 and \$12,000 respectively. However, the inventory attached to the lease remained unaltered, listing out even the items which had been crossed out earlier.

8 There was no written agreement for the fifth lease between 1 December 1994 and 30 November 1996 but the parties carried on as landlord and tenant pursuant to the terms of the fourth lease.

9 The sixth lease was by way of a letter dated 1 August 1996 from Lucky Red to Top Ten, covering the period from 1 December 1997 to 30 November 2000. The rent was apportioned as \$55,000 and \$15,000 respectively, with the inventory remaining unchanged.

10 The seventh lease, dated 4 August 1998, was for the period from 1 December 2000 to 30 November 2003. The rent was apportioned as \$51,000 and \$11,000 respectively, with the inventory again remaining unchanged.

11 Due to the good relationship between Peter Bader and Loi, Lucky Red never insisted on its strict legal rights. Loi agreed with Peter Bader that the rent could be paid within the first ten days of the month. On many occasions, rent was paid late and on a number of occasions, the rent was reduced. However, in September 2001, Lucky Red's solicitors demanded payment for arrears of rent and claimed possession of the premises. Top Ten's solicitors contended that the hiring charge of \$11,000 was not payable as it was a fraud on the revenue authority and claimed that Lucky Red was liable to refund Top Ten the hiring charges paid over the last six years. Top Ten found out that the Property Tax Department had assessed the annual value of the premises as \$612,000, which worked out to be a rental of \$51,000 per month. The hiring charge of \$11,000 was not taken into account.

12 At all material times, the apportionment of the rent for the premises and the hiring charge was done at Loi's direction. Top Ten had no say or choice in the matter and did not know why Loi had directed that the rent be apportioned in that manner.

13 Top Ten therefore claimed a declaration that the provision pertaining to the hiring charge in the lease agreement was null and void as being against public policy and as being a fraud on the revenue authority. It claimed it was not liable to pay the hiring charge of \$11,000 per month "by reason of there being no consideration or a partial/total failure of consideration". It also claimed against Lucky Red the return of a total of \$803,400 paid as hiring charges over the six years between April 1995 and March 2001 on the basis of money paid by mistake, as money had and received or on the ground of total or partial failure of consideration and/or frustration.

14 Two witnesses testified for Top Ten. The first was Robert Chan Mun Hon of Asset Appraisers & Auctioneers Pte Ltd, a licensed appraiser and auctioneer with more than 25 years of experience. He was asked to provide an opinion on the rental value of the items in the inventory as at 4 August 1998 and 1 December 2000. He visited the premises in April 2003 before making his report dated 10 September 2003. After a detailed search, he was able to identify only the air-conditioning system (comprising a 60-ton cooling tower, condenser water pumps, motors, a reciprocating water-cooled package unit and a control panel), two office tables, two cabinets, venetian blinds, one fire extinguisher which was last serviced in 1986 and one which was last serviced on 7 April 2003. He opined that the inventory must be at least 19 years old since it existed from the time of the first lease agreement in December 1984.

15 He noted that the air-conditioning system had exceeded the industry's accepted lifespan of ten years and that it was an inefficient consumer of electricity although it was still functioning. The model of the system had been obsolete since some ten years ago. He estimated the original cost of the system at \$126,800.

16 The electrical fittings would have exceeded their lifespan of ten years. Robert Chan was informed by Top Ten that the premises were renovated in 1999 and 2001 and all the lights had been changed. Lights should have been considered as consumables and should not have been included as fittings and fixtures. They could not have lasted for more than two years in commercial use at any rate.

17 The report then discussed the accepted methods of depreciation in the determination of equipment rental. It stated that in determining the rental of an asset, one first considers the period one wishes to recover one's capital outlay and the practice is to recover the capital over a period which is invariably shorter than the accepted lifespan of the asset. Despite the various accounting methods adopted by organizations in depreciation of their assets, the accepted lifespan for depreciating fire and security equipment is 20 years, that for air-conditioning and lighting equipment is ten years, that for furniture is five years while that for computers and electronic equipment is three years.

18 In his calculations, Robert Chan proceeded on the basis that the landlord would recover its capital in half the expected lifespan of the items in the inventory and that any collectable rental after that would be pure profit. On the assumption that the said items were installed or purchased in 1984 (the start of the tenancy), he opined that the market rental to be paid for the inventory items should have remained at \$4,000 for both 4 August 1998 and 1 December 2000.

19 Robert Chan's evidence was not challenged by Lucky Red.

20 Peter Bader, a Swiss national and the managing director of Top Ten, has been working in Singapore since 1982. He negotiated the first lease with the then owner of the premises. The rent was agreed at \$32,000 per month. Top Ten also had to pay the monthly service charge to the management corporation of Orchard Towers. There was no discussion on how the rent was to be apportioned and he had no idea why the apportionment was done. The lease agreement was drawn up by the landlord's solicitors with the apportionment already done and he executed it before his solicitors. It was the first time he rented commercial premises in Singapore.

21 Renovations were then carried out to convert the erstwhile cinema into a discotheque. The electrical fittings were removed as the lighting was not suitable for a discotheque. Some of the items of office furniture were used by Top Ten but the majority outlived their usefulness a long time ago. All the items in the inventory were already many years old when Top Ten became the tenant of the

premises. The fire and security equipment had passed its expiry date and most of it was discarded. Over the years, Top Ten purchased new equipment to replace the things discarded.

22 Lucky Red carried on business in Singapore from the time it purchased the premises. It also owned a unit at the Beverly Hill condominium in Grange Road. Lucky Red was never registered under Singapore's Companies Act.

23 Peter Bader asked Loi for an extension of the first lease. In 1987, Lucky Red instructed its solicitors to prepare an agreement for a three-year term with the rent increased to \$38,400 and apportioned as stated earlier. Apart from minor changes, this agreement was identical to the first lease.

24 In 1990, Loi agreed to grant another extension of the lease at an increased rent of \$56,000. They agreed that a new lease be drawn up based on the first one. Again, the rent was apportioned in the manner indicated earlier but Peter Bader had nothing to do with the apportionment.

25 In June 1990, he told Loi that many of the items in the inventory attached to the 1990 lease agreement were no longer on the premises. On 7 June 1990, Lucky Red faxed a note to Top Ten to confirm that it did not require delivery up of the items crossed out in the inventory which was attached.

26 On 9 September 1992, a lease for one year beginning from 1 December 1993 was signed with the rent increased to \$70,000 but apportioned as \$58,000 and \$12,000 respectively. The other extensions followed with the rent for the premises and the hiring charges apportioned in the way described earlier.

27 Peter Bader did not know that the apportionment of the rent was Loi's device to defraud the revenue authority. He learnt about it only in 2001 in an exchange of correspondence between his solicitors and Lucky Red's solicitors.

28 Peter Bader and Loi became close friends over the years. They met often, almost always at the nearby Orchard Hotel. Loi was supportive and reduced the rent for many months during difficult economic situations. He also did not insist on strict adherence to the terms of the lease on the due dates of payment of rent. For instance, in a letter dated 7 September 1994, Lucky Red stated that "we are pleased to confirm that in view of the major renovation work to the disco club and as a goodwill, we agree to adjust the rental rates for above tenancy agreement ... to \$600,000 per annum" or \$50,000 per month when the agreement was for \$70,000 per month.

29 In 1998, Loi again agreed to reduce the rent temporarily from \$70,000 per month to \$65,000 per month between 1 August and 31 December 1998. This was in keeping with Loi's promise to Peter Bader that he would lease the premises to him for as long as he wanted to occupy the premises. Loi wanted the discotheque to continue operations as Top Ten was a good tenant for many years. He knew that many discotheques had closed down after a few years.

30 In 2001, Peter Bader asked Loi for a reduction in rent because of the poor economic conditions in the entertainment industry and Loi acceded to his request. There were arrears in rent. In the midst of their correspondence on this, Top Ten suddenly received a letter dated 12 September 2001 from Lucky Red's solicitors demanding payment of the arrears. Peter Bader consulted his solicitors and was advised that the hiring charge in the lease agreement might amount to an illegality. Lucky Red's solicitors disagreed. Top Ten paid most of the arrears of rent. It also paid the hiring charge under protest and made a demand for the return of the total of the hiring charge paid over

the last six years. Loi and Peter Bader remained in negotiations for an amicable settlement.

31 In April 2002, Peter Bader received a letter from Leivest's solicitors demanding payment of the rent for April 2002 which was then only eight days overdue. He sent a cheque for \$51,000, stating that Top Ten would no longer pay the \$11,000 hiring charge as advised by its solicitors.

32 A search done in October 2001 showed that the annual value of the premises was \$612,000 which worked out to be a monthly rent of \$51,000. It was therefore obvious that Lucky Red had declared to the Property Tax Department that the rent received was only \$51,000 per month. Documents produced in discovery showed that the latest annual value was \$588,000 per annum or only \$49,000 per month. That showed that the tax authority continued to be under the impression that the premises were being rented out at \$49,000 per month when the total rent was actually \$62,000 per month.

33 Peter Bader added in oral testimony that as Top Ten was unable to meet its payment obligations in the middle of 1998, Loi agreed to reduce the rent from \$70,000 to \$65,000 per month. From January 1999, Top Ten paid a reduced rent of \$56,000 because Loi had agreed to a 20% reduction from \$70,000 from January 1999 until the end of the tenancy on 30 November 2000. This was in spite of a letter dated 24 February 1999 from Lucky Red stating:

Owing to the economic crisis, we have agreed to accede to your request and reduce the rental temporary to S\$58,000 per month from 1<sup>st</sup> January 1999 to 30<sup>th</sup> June 1999.

From 1<sup>st</sup> July 1999, the rental would revert back to the original amount of \$70,000 per month as per the Tenancy Agreement dated 1 August 1996.

In this respect, would appreciate if you could let us have the shortfall of \$4,000 for January 99's rental to be included in the February 99's rental cheque.

Top Ten had actually paid Lucky Red only \$54,000 for the month of January 1999.

34 When Loi wrote a letter dated 6 September 2000 to protest that Top Ten was always two to three months in arrears in rent and had not paid the rent for July and August 2000, Peter Bader replied on 8 September 2000 to say that payments for April and June 1999 were omitted due to oversight and reminded Loi that they had orally agreed to a rent reduction from June 1999 until the end of the tenancy. He enclosed payment for \$112,000, being rent for April and June 1999. On 19 September 2000, Loi responded as follows:

We have agreed to rental reduction from \$70,000 to \$58,000 from January 1999 to June 1999, however to assist you further during the economic crisis, we extended the period of reduction to December 1999. However, we note you have been paying us rental of \$56,000/month for period January 1999 to December 1999.

The rental reduction will no longer apply and has to revert back to \$70,000/month with effect from January 2000. However, again, we note you have paid only \$56,000/month. In this respect, we need to meet to resolve the issue and review the Tenancy.

Meanwhile, please bear in mind rental for the premises is due and payable by the 8<sup>th</sup> of each month and appreciate you pay us September 2000 rental of \$70,000 promptly.

Hence, let's meet to discuss. We will be waiting for your phone call to arrange a suitable time to

meet.

35 On 22 September 2000, Peter Bader replied to Loi stating:

You told me more than once that the Rental reduction will be in place until the end of this Tenancy agreement. I am surprised to find that you now all of the sudden change your mind and want the full Rental again. This amounts to you reneging on your agreement which is not right.

We shall continue to pay as agreed the amount of S\$56,000.00 until the end of November and from then on the Rental agreed in the New Tenancy Agreement.

36 On 4 October 2000, Loi wrote to Top Ten to reiterate that the indulgence of the reduction in rent to \$58,000 was for the first six months in 1999, later extended for another six months to December 1999. He reminded Top Ten that the rent of \$70,000 stipulated in the tenancy agreement was payable with effect from January 2000 and asked that the shortfall in payment of \$14,000 per month for nine months be made good. Further letters from Loi followed, reiterating much the same thing and asking for the shortfall to be made good by Top Ten.

37 Peter Bader asserted in evidence that between the letter of 24 February 1999 and that of 19 September 2000, neither Lucky Red nor Loi protested that Top Ten had been paying only \$56,000 per month as rent.

38 He agreed that the tenancy agreements (together with the inventory) between Top Ten and Lucky Red were drafted by solicitors acting for Top Ten or for both parties. In a letter to his solicitors in June 1992, he instructed them to "kindly note that Lucky Red would have to decide on the issue of hiring charges. I presume however that these will remain the same as in the previous agreements as in a proportional increase". He agreed there was no inspection of the inventory by Lucky Red before each renewal of the tenancy. It did not matter to him how much was allocated as the hiring charge as he was concerned only with the total rent payable. Negotiations were always on the total rent payable and never about the hiring charge. The apportionment done by the solicitors was based on instructions from Lucky Red.

39 Peter Bader agreed that Top Ten paid the total rent (including the hiring charge) to Leivest for the month of May 2003 when the new landlord executed a writ of distress on the premises in June 2003. The payment was done in order that Top Ten could carry on its business.

### **The case for Lucky Red**

40 Loi, an accountant by training, testified for Lucky Red. He is the majority shareholder and a director of Lucky Red, a shelf company registered in Hong Kong acquired by him in 1983. Leivest is a Singapore investment company incorporated in October 2001 owned by Loi's two children. Loi denied the allegation that Lucky Red attempted to deceive the tax authority by the use of the hiring charge. He asserted that it was at most a case of misdescription of the inventory. The issue of hiring charge was a matter between the landlord and the tax authority and should not be of concern to the tenant.

41 Lucky Red waived one month's rent in April 1993 because the premises were under renovation for about 60 days. In 1994, a rent rebate of \$240,000 was given to Top Ten again because of

renovations to the premises. Top Ten also requested a rent rebate of some \$115,000 for 56 days of renovation works which it said it wanted to carry out.

42 Lucky Red counterclaimed against Top Ten for shortfall in the payment of rent (including the hiring charge) between January and November 2000 and between November 2001 and March 2002 together with interest, as particularised in Lucky Red's various invoices. The total claim amounted to more than \$300,000. Loi asserted that he agreed to a reduction in rent from \$70,000 to \$56,000 per month between January and June 1999 only but Top Ten took advantage of the situation and continued paying the reduced rent even after June 1999. Eventually, Lucky Red decided to waive the shortfall of \$14,000 per month between July and December 1999 as well but he could not recall when that took place. He was adamant that there was no rent deduction from January 2000 onwards. His staff would call Peter Bader about the shortfalls in payment but he was out of the country frequently as he had businesses in Thailand as well. The shortfalls were recorded. Lucky Red was indulgent towards Top Ten as it had been a tenant for a long time.

43 The 64-year-old Loi started developing and investing in immovable property from around 1986. By 1997, he was controlling some 130 properties, 124 of which were apartments in a condominium built by his company. He bought Lucky Red as a vehicle for his investments in China, Hong Kong and Singapore. Lucky Red owns the premises in issue and an apartment in the Beverly Hill condominium in Grange Road.

44 Loi testified that all Lucky Red did was to collect rent on its properties. It did no business here and therefore did not need to be registered as a foreign company.

45 In every property that he rented out, although rent was negotiated as a global amount, a hiring charge was always a component of the rent in the written agreement. According to the industry norm, a certain proportion of the total rent would be assigned as the hiring charge. That would be within the range of 10 to 25%. He was advised by a property consultancy firm and by tax consultants in his dealings. He would submit an owner's return with the tenancy agreement attached to the tax authority but he did not know how the tax authority assessed the property tax. He agreed that he had not gone to the premises since purchasing it to check the inventory. This was so even when Peter Bader requested the deletion of some items as he trusted Peter Bader.

### **The decision of the court**

46 In so far as the factual issue was concerned, I was satisfied that Loi spoke the truth when he said that he agreed initially to reduce the rent from \$70,000 to \$56,000 per month for the first six months of 1999 only and later agreed to extend the reduction of rent for another six months. I accepted his evidence that there were oral requests made by his staff to Top Ten to pay up the shortfall in rent in 2000. I also accepted his explanation that there was no written demand made until September 2000 because of the erstwhile good, long-term relationship Lucky Red had with Top Ten. Loi acknowledged in his testimony that the rent was reduced to \$56,000 per month and not \$58,000 per month as stated in his letters in September 2000.

47 Even if Loi had agreed to extend the reduction in rent up to the end of the previous tenancy in November 2000 and then changed his mind, one wonders what the consideration was that would entitle Top Ten to insist on the reduction nonetheless. Top Ten did not appear to have done anything to its detriment in reliance on such an alleged promise. However, those issues need not be gone into as it was clear to me that Loi did not agree to any reduction beyond 1999.

48 On the legal issue, Top Ten submitted that the question to be asked here was whether Lucky

Red had any reasonable belief that it was entitled, from the commercial point of view, to attribute a value of \$11,000 to the inventory when nothing was ever added to it and there was nothing therein qualifying as antiques. Top Ten's case was that Lucky Red was deceiving the tax authority as there was no commercial justification for any hiring charge beyond \$4,000 per month, even if the air-conditioning system was treated as movable property. By attributing much more to the hiring charge than was justified, Lucky Red created the impression that the rent collected was lower than what it ought to have been. By that deception, Lucky Red would therefore pay less property tax.

49 It was common ground that the parties never did a joint-check on the inventory during the tenancy or when renewing it. They merely continued with the tenancy agreements from time to time, relying on the previous ones save for changes made to the dates and the rent and hiring charge payable.

50 Top Ten relied on *Chartered Bank v The City Council of Singapore* [1959–1986] SPTC 1 for the proposition that depreciation based on original cost was the only proper method of determining a fair commercial value for the hiring of movable property. In that case, Wee Chong Jin J, in deciding an appeal in 1959 involving objections to the annual values of certain properties, allowed deductions for services (such as air-conditioning and depreciation of equipment) to be made from the gross rents of those properties in arriving at the annual values thereof. The judge opined at 4–5 that:

[D]epreciation is the correct basis and the yearly figure of depreciation should be arrived at in respect of each category of plant or equipment by taking the actual cost when installed and dividing it by the number of years comprised in its actual past and estimated future life.

51 Top Ten also cited the decision of the Valuation Review Board in *Tan Chong Realty (Pte) Ltd v Chief Assessor* [1959–1986] SPTC 338. The appeals in that case, decided in 1984, concerned the first assessment of eight units of identical townhouses. In considering the contention that the amount of \$1,350 per month allowed for furniture and service charge was unrealistic as it did not permit the appellants room for profit and the right to carry on the trade of hiring furniture, the Valuation Review Board said:

It has been the practice of this Board, which practice has been accepted at large, to allow a straight line depreciation of 20% per annum on capital sums expended on furnishing over 5 years.

52 It was not disputed that there was at least some value in the inventory items. Even Top Ten's expert witness opined that the hiring charge in 1998 and 2000 ought to be \$4,000. Clearly, the parties did not contract on the basis that the hiring charge would be according to valuation. The hiring charge was apportioned by Lucky Red as a proportion of the total rent within the range of 10% to slightly more than 20%. Loi, being a landlord of many properties and over many years, had the knowledge to testify that that was the practice in the property leasing market. The apportionment might have been unscientific but it was not unlawful. The law also does not concern itself with adequacy of consideration.

53 Central to Top Ten's case was the assumption that Lucky Red had used or would use the hiring charge to deceive the tax authority. There was no evidence at all that that was the case. The apportionment was dutifully declared to the tax authority and the tenancy agreements with the inventory were submitted or were available for scrutiny. There was no attempt or intention to mislead the tax authority about what was on the premises. At most, the inventory submitted was carelessly inaccurate rather than fraudulently so. At any rate, Top Ten was a party to the inaccuracy. If the suggestion was that the tax authority was deceived because it always followed what was stated as the rent in the tenancy agreement, how would Top Ten explain why the premises were now valued at



\$49,000 per month when the rent was declared to be at least \$51,000 (not including the hiring charge of \$11,000)?

54 The apportionment of a part of the total rent as a hiring charge is a common practice. Landlords and tenants usually negotiate tenancy agreements on a global rent basis bearing in mind the furniture and fittings that are or will be installed on the premises. They accept that partially or fully furnished premises would command a premium over unfurnished ones. However, it must be an extremely rare landlord who fixes the hiring charge by first doing the sort of valuation exercise undertaken by an appraiser. I do not think the tax authority demands or expects such a valuation exercise to be done except in appeals before the Valuation Review Board.

55 The hiring charge was at most an over-estimation in the circumstances here. It was not done with the intention of deceiving the tax authority and it could not be said that the apportionment had no justification whatsoever as there was value in the inventory. This removed the present case from the likes of *Miller v Karlinski* [1945] 62 TLR 85, *Napier v National Business Agency Ltd* [1951] 2 All ER 264 and *Alexander v Rayson* [1936] 1 KB 169, where the schemes were clearly calculated to deceive the revenue authorities and served no other purpose. Interestingly, while these cases held that contracts to deceive the revenue authorities were not severable, Top Ten would like to continue with its tenancy by paying only the rent proper but not the hiring charge.

56 Top Ten also contended that Lucky Red, a foreign company, was carrying on business in Singapore without complying with the registration requirements of section 368 Companies Act (Cap 50, 1994 Rev Ed). Although section 366(1) of the Act defines "carrying on business" as including "administering, managing or otherwise dealing with property situated in Singapore as an agent, legal personal representative, or trustee, whether by employees or agents or otherwise", s 366(2)(i) provides that "[n]otwithstanding subsection (1), a foreign company shall not be regarded as carrying on business in Singapore for the reason only that in Singapore it ... holds any property". Even if Lucky Red ought to have been registered in Singapore, the sanction for its non-compliance would be a fine and a penalty under s 386. The non-registration alone would not make its dealings with Top Ten unenforceable.

57 I therefore found that Top Ten's claim for the refund of money paid as hiring charges failed and that Lucky Red's counterclaim succeeded. I awarded Lucky Red contractual interest on the amounts not paid by Top Ten and costs on an indemnity basis as provided in the tenancy agreement. Lucky Red applied for a certificate for two counsel but I did not think the case warranted such a certificate being given.

*Plaintiff's claim dismissed. Defendant's counterclaim allowed.*