

**P S Tan and K Y Tan –v- J Sitkowski [1 February 2007] Court of Appeal**

**The Message:** A tenant of premises that were originally used for mixed business and residential purposes failed in his claim for rights as a protected residential tenant.

**The Case:** The question to be decided in this case was whether a tenant enjoyed protection under the Rent Act when he had previously used part of his premises for a business use.

Before 1970, Mr Sitkowski occupied a property in York Road, London SW11, the ground floor being used for his electrical retail business and the first floor as a residence for him and his family. In 1970, the York Road property was acquired for demolition and Sitkowski was rehoused in premises in Battersea Bridge Road, SW11.

Those premises were recorded in the rating list as "shop flat and premises" and appeared to have been physically adapted for use as a shop on the ground floor and living accommodation on the first floor. From 1970 until 1989, Sitkowski lived on the first floor with his wife and children and occupied the ground floor for his business as a retailer of electrical goods.

In 1989, Sitkowski stopped using the ground floor for his business. He continued to occupy the first floor as his home and used the ground floor for storage in connection with his residential use of the first floor.

Under the lease Sitkowski had from the GLC, he had an obligation not to use the premises for any purpose other than as a retailer and repairer of televisions and radios.

In 1990, Phaik Seang Tan and Kit Yeng Tan became Sitkowski's landlords and in 2003 they served various notices to quit on Sitkowski, at least one of which, according to the Court, was effective to terminate Sitkowski's tenancy by November 2004. For much of the period during which the Tans were Sitkowski's landlords, they received the rent from the local housing authority through housing benefit.

The relationship between the Tans and Sitkowski was not good. The Tans made a claim against Sitkowski for possession of the premises. The issue for the Court of Appeal was whether following the expiry of the notice to quit, Sitkowski was a statutory tenant under the Rent Act 1977. If he was a statutory tenant, the matter would need to be sent to the County Court where Sitkowski might have an entitlement to damages if wrongfully deprived of his tenancy.

Until 1989, Sitkowski occupied part of the premises for business purposes and enjoyed the protection of the Landlord and Tenant Act 1954. When the business use ceased in 1989, the 1954 Act no longer applied.

Sitkowski's primary case was that by the time the Tans' notice to quit expired in 2004, Sitkowski was a protected tenant of "a separate dwelling" under the Rent Act. The Tans opposed this on the basis that there was authority that if a tenancy is granted for mixed business and residential use and is subject to the 1954 Act, the tenant cannot simply by unilaterally ceasing the business use give himself protection under the Rent Act.

The Court of Appeal, deciding a question of law, held that Sitkowski could not claim protection under the Rent Act because having been let for mixed business and residential use, the premises were not "let as a separate dwelling" for the purposes of the Rent Act.