IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1989] SGHC 20

Suit 9217/1984

Between

Harvester Baptist Church Ltd

… Plaintiff

And

Chua Moh Huat Dennis

… Defendant

GROUNDS OF DECISION

Contract; Contract

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Harvester Baptist Church Ltd v Chua Moh Huat Dennis

[1989] SGHC 20

Suit 9217/1984
Chua F A J
01 March 1989

1 Cur Adv Vult

2 By an agreement (the agreement) dated 29 May 1984, the plaintiffs, Harvester Baptist Church Ltd, agreed to purchase from the defendant, Dennis Chua Moh Huat, a bungalow house No 3 Bartley Road, Singapore (the premises), for $915,000. Completion was scheduled to take place on 30 September 1984. On 28 November 1984, the plaintiffs` representatives inspected the premises and alleged that they found the house in `a deplorable, completely untenantable and severely deteriorated state of repair and condition as compared to the state of repair it was in at the date of the signing of the agreement.` On 29 November 1984, the plaintiffs, through their solicitors, gave notice in writing (AB 18) to the defendant`s solicitors of the condition of the premises and demanded that the house be restored to the same condition as it was at the date of the agreement. The plaintiffs alleged that the defendant `refused, failed or neglected to so restore the premises to the condition as stated in cl 6 of the agreement, and by his action and conduct had rendered himself incapable of delivering vacant possession of the premises to the plaintiffs as required of the defendant under cl 5 of the agreement`. The plaintiffs alleged

that in breach of cl 5 of the agreement, the defendant had failed to deliver vacant possession of the premises to the plaintiffs on 30 November 1984, and by his failure to do so, evinced an intention that he would no longer be bound by the agreement. On 3 December 1984, the plaintiffs` solicitors by telex informed the defendant`s solicitors that the defendant was in breach of the agreement and the plaintiffs thereon gave notice of their rescission of the agreement and demanded the refund of the sums of $91,500 and $100,000 paid by the plaintiffs to the defendant together with interest thereon.

3 The defendant failed to refund the sums demanded and the plaintiffs commenced the present proceedings claiming, inter alia:

> (a) A declaration that the plaintiffs have effectively rescinded the agreement.
>
> (b) Repayment of the sum of $91,500 together with interest at the rate of 11.5%pa from 29 May 1984, till date of payment.
>
> (c) Repayment of the sum of $100,000 together with interest at the rate of 11.5%pa from 4 June 1984, till date of payment.
>
> (d) $13,527.50, the expenses and disbursements incurred by the plaintiffs in or about the said sale and the damage suffered by the plaintiffs.
>
> (e) A declaration that the plaintiffs are entitled to a charge on the premises until refund of the sums of $91,500 and $100,000 and interest thereon at the rate of 11.5% pa.

4 The plaintiffs` case is shortly this. The plaintiffs in 1984 were urgently looking for premises to house foreign missionaries (with families) coming to Singapore. The plaintiffs looked around for accommodation within the vicinity of the church. The premises, No 3 Bartley Road, adjoins the church, and belongs to the defendant. Rev Tay Cheng Tee (PW3), Rev Paul Lai (PW4) and Lee Su Seng (PW13) went to inspect the premises. They were very satisfied with the overall condition of the house; the house was clean and in good condition, all it

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needed was a coat of fresh paint and it would be fit to accommodate the missionary families. They then approached the defendant. They made one more inspection in early May 1984. The house and compound were in the same condition as in their previous visit.

5 Eventually the plaintiffs and the defendant signed the agreement. At that time, 29 May 1984, the premises were not occupied. In mid-June 1984, Rev Thomas Hunnicutt (PW14) inspected the house with Rev Tay. The house was in the same good condition as it was on 29 May 1984.

6 Rev Tay then asked the defendant for immediate possession of the house to accommodate Rev Hunnicutt and his family. The defendant said he would consider the request and would give a reply but he never did give a reply. The defendant said that he had some foreign workers which he had to house somewhere.

7 Early in July 1984 Rev Tay found out that some foreign workers had moved into the premises. Rev Tay then spoke to the defendant who assured him that the foreign workers were there temporarily until his problem with the Ministry of the Environment could be sorted out.

8 In July, August, September and October, Rev Tay visited the premises. He found that more and more debris and junk were stored in the compound. The vegetation was overgrown and unattended.

9 Sometime around 24 November 1984, nearing the date of completion, Rev Tay and Rev Lai inspected the premises. The whole compound was filled with debris and junk. They went into the house. The whole house was filled with filth. The floor had not been swept for months and the place stank. They walked

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around the house. They were shocked to see that the window panes were broken, the ceiling boards of the room were broken through and a certain area of the parquet floor was waterlogged and mildewed. There were holes in the toilet door. It was not the house that they had contracted to buy.

10 The version of the defendant is shortly this. He has been a building contractor since 1968. He purchased No 3 Bartley Road for $750,000 in March 1984 from Sim Teng Boon. He intended to demolish the existing old bungalow house and build thereon a pair of semidetached houses. He never saw the inside of the house before signing the agreement to purchase. After signing the agreement he requested for an inspection `more on the land than the house`. However, he did go into the house. It was in a shocking condition: `the ceilings were falling off, most probably attributed to roof leaks. The doors and joints were broken and unserviceable to a certain extent. The sanitation also in bad condition. The walls were generally bad. The house was in a very shabby condition; with automotive grease. I found a few cartons of automobile spare parts`. The bad condition of the house did not worry him at all as his main intention was to demolish the house as soon as he received planning approval from the relevant authorities.

11 After the defendant had signed the agreement, Rev Tay Cheng Tee and Rev Paul Lai came to see him in about April 1984. Rev Tay told him that the Church was in need of No 3 Bartley Road primarily for the purpose of creating access through No 3 to Bartley Road and asked if he was interested in selling the premises. The defendant informed Rev Tay that he had already submitted plans for approval to build a pair of semi-detached houses and that the church would have to buy the premises with the planning approval at the price of $1.15m as advertised in the Straits Times of 30 March 1984. He did not make representation to Rev Tay and Rev Lai that the house was in a habitable

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condition. He had assumed that they knew the bad condition of the house since the church was just behind No 3 Bartley Road and shared a common boundary. Rev Tay and Rev Lai said that the asking price was too much for the church to pay and asked him to think about lowering the price as a Christian.

12 The defendant after consulting his parents informed Rev Tay and Rev Lai at their second meeting that he would reduce the price to $980,000, a substantial reduction of $170,000. The response was that the price was still too high and that the church would have to expend a substantial sum of money, between $40,000 and $60,000, to carry out rectification and restoration works to the house to make it habitable. He was reluctant to reduce the price any further and offered to carry out rectification and restoration works for the church and regard the costs as a donation to the church. Rev Tay, however, said that they would rather use their own contractors together with some of the church members to carry out the works themselves. He then proposed that the church buy one unit of the semi-detached houses when it is built as the church would then have access to Bartley Road. Rev Tay and Rev Lai rejected the proposal and said that they would rather buy the land with the planning approval.

13 At the third negotiation the price was agreed at $915,000 and on or about 29 May 1984, the agreement was signed. The completion was scheduled for 30 September 1984, with a possibility for an extension to 30 November 1984.

14 Sometime in early May 1984 the defendant employed SP Chua Pte Ltd, a construction company of which the defendant was a director, to move into the premises to clean up the mess and `restore to a certain condition good enough to accommodate the company`s foreign workers`. SP Chua Pte Ltd then took a tenancy of the premises from 14 May 1984, at a rent of $800 per month.

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15 On 14 May 1984, fourteen foreign construction workers of SP Chua Pte Ltd moved into the premises. When the foreign workers moved into the premises they `went for the most important thing, to arrest the roof leaks by placing tarpaulin and canvas sheets over the roof. They also connected some electrical wires, water pipe lines and utilities which they needed. They did some painting to the walls, the ceilings a little bit of it, and they cut the lallang and grass. They also had to put in a 42-gal drum in the toilet to store water for their daily use. The defendant did not carry out any permanent repairs; he did not want to incur unnecessary expenses on the house because he would be demolishing the house.

16 After signing the agreement, Rev Tay came to see the defendant requesting for early possession of the premises to carry out renovations to house some foreign students. The defendant told Rev Tay that he could not meet the request because the foreign workers were still residing in the premises and it would be difficult to find alternative accommodation for them at such short notice.

17 Rev Tay approached the defendant again for possession of the premises, telling the defendant that he, Rev Tay, had to move his family out of his present place of residence and that he was in need of accommodation at No 3 Bartley Road. The defendant still would not agree to give Rev Tay possession.

18 On 30 November 1984, SP Chua Pte Ltd moved into the premises at 7.30am and cleared the compound of building materials.

19 On 1 December 1984, the defendant informed his solicitors that the premises had been cleared and tidied and was ready to be handed over. On 4 December 1984, at 9.30am he was at the premises for a joint inspection

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requested for by the church. Upon entering the main door of the house, Mr Joshua Lim, the plaintiffs` solicitor, shouted aloud: `How do you expect my clients to buy this house?` Mr Lim swiftly went through the house pointing to defects and shouted again: `Take him to court, take him to court.` Mr Lim also remarked that the whole building was structurally unsound. The inspection took not more than twenty minutes. The defendant tried to speak to Mr Lim, to tell him that that was the original state of the house but he did not respond; he did not bother to listen. The defendant tried to explain but no one responded.

20 On 4 December 1984, the defendant`s solicitors received from the plaintiffs` solicitors a telex calling off the sale and demanding the refund of the money paid. The defendant`s solicitors then gave the required twenty-one days` notice to the plaintiffs to complete the sale and purchase. The plaintiffs failed to comply with the notice. Even before the 21 days` notice expired the plaintiffs filed the writ on 18 December 1984.

21 The defendant then tried to sell the premises but was unsuccessful. On 27 February 1985, the plaintiffs lodged a caveat against the premises. With the caveat no finance company was interested in financing the development of the property. The defendant applied to the court to remove the caveat. By an order dated 2 September 1985, it was ordered that the caveat be discharged provided the defendant furnish a bank guarantee for $191,500 as security. The defendant was unable to raise the bank guarantee to this day.

22 The defendant maintains that:

> (1) he `was at all material times ready able and willing to deliver vacant possession to the plaintiffs and to complete the sale and purchase of the said premises;

> (2) the plaintiffs have unlawfully repudiated the agreement and have failed to complete the purchase as requested by the defendant and the defendant is entitled to forfeit and did forfeit the sums of $91,500 and $100,000 being the moneys paid by the plaintiffs to the defendant to account of the purchase price of the premises;
>
> (3) the defendant has suffered loss and damage as a result of the unlawful repudiation of the agreement, and claims for damages for breach of contract.

23 Rev Cliff Hunnicutt (PW1) inspected the house No 3 Bartley Road on 30 November 1984, and 15 December 1984 and took photographs(exh P1-P37). The evidence of Rev Cliff Hunnicutt and the photographs he took clearly showed that the house then was in a shocking state and not habitable. On 7 December 1984, John Gunner (PW2), quantity surveyor and a partner of Rider Hunt Levett & Baily, Quantity Surveyors and Costs Consultants, inspected No 3 Bartley Road and took photographs. His firm had been instructed to carry out a survey of the house by the plaintiffs. He subsequently submitted a report dated 4 January 1985 (exh P38), to the plaintiffs. He estimated that it would cost $43,645 to restore the house to a habitable state. He did not consider the condition of the house fit for human habitation.

24 The defendant said that when he bought the house `it was in a shocking state of condition`. He adduced evidence to support his contention.

25 The evidence of Lee Ah Choy (DW4), the wife of Sim Teng Boon (the former owner of the house who died in June 1985) was that the house was tenanted until 1983 and that it was vacant for one year before it was sold to the defendant in March 1984. During the time the house was vacant, it was not maintained by her husband. When the house was sold to the defendant, it was `old and shabby, no repairs had been done`. She said that when the house was tenanted, it was the responsibility of the tenant to maintain the house. The house

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was never repaired by her husband. She knew that the roof was leaking and there were stains on the ceiling. The leaks and the stains had been there for three or four years. It was leaking for a long time. When she was cross-examined it transpired that the last tenant was only asked to vacate the premises by 29 February 1984 (exh P54). I am unable to rely on her evidence as to the condition of the house when it was sold to the defendant. She did not manage the property, it was her husband who did. She does not even know what business the husband was doing. I doubt if she even inspected the house. It is inconceivable that the tenant would not have had the bad leaks repaired himself so that he could live there comfortably.

26 Carol Chia (DW7), project manager of Greenridge Development Pte Ltd, said in evidence that sometime in April 1984 she inspected No 3 Bartley Road as her company might be interested to buy the premises from the defendant. She went alone. She said:

> *As I walked in I saw this house, it looked haunted, I was little frightened; it looked very old. Nevertheless I walked into the house. I saw that the house was dilapidated; there were a lot of stains on the ceiling, a number of broken ceiling boards. I remember there was a broken door, a door that was damaged, holes in the door. I remember a very old sink and brown stains just below the window above the sink. I remember a tree on the right side as I entered the gate. It looked as if the house had not been occupied for some time. I think you need to do some work inside the house before one could live in it.*

27 In cross-examination she said that she did not see any broken roof; there was no debris outside the house; the ceiling was stained as shown in photograph 31; she saw there were broken tiles but there was no tarpaulin to cover the holes in the root She thought that the house had not been occupied for at least one year.

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28 The plaintiffs called Tan Toh Chin (PW10). His evidence was that he was a friend of Henry Sia who lived at No 3 Bartley Road with his family. Henry Sia used part of the house as an office. He frequently visited Henry Sia there. He said:

> *During my frequent visits to No 3 Bartley Road, it was an ordinary residential house, not very dirty; it was habitable. It was an ordinary house, not very beautiful, not very dirty and not in a very bad shape. Certainly it was fit for human habitation. I would rent No 3 Bartley Road to live in; if I didn`t have a place to live in.*

29 The notice to quit, exh P54, was addressed to Sia Sik Kay the tenant of No 3 Bartley Road. There is no doubt that Henry Sia referred to by PW10 was Sia Sik Kay.

30 An attempt was made by the defendant to discredit Tan Toh Chin. Wee Egk Chong (DW8), a legal assistant in Wee Swee Teow & Co (the solicitors for the defendant) gave evidence, which shortly was this. Sometime on 9 March 1985, he went with the defendant to see Tan Toh Chin because the defendant had ascertained that Tan had been a tenant of No 3 Bartley Road. The purpose was to find out the general condition of No 3 Bartley Road from Tan. The defendant had brought along some photographs exh D5. These photographs were shown to Tan and he was asked to comment on the general condition of the house as shown in the photographs. Tan had said that the condition was in fact worse than that shown in the photographs. Tan had also said that his company was the tenant of No 3 Bartley Road for about two years and he had used the premises mostly to store spare parts and to park cars in the compound and on some occasions he and some of his employees had stayed overnight there. Before moving into the premises he had to clear the lallang surrounding the property, install pipes and wirings to get water and electricity supplies and further had to do renovations like painting and giving a fresh coat of paint. Tan

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also said that it leaked when it rained even after the renovations. Tan acknowledged there were roof tiles missing as well as several stains in the ceiling. Tan also said there were many rats in the premises and the rats might have caused damage to the doors. The toilets he said were in a dilapidated condition and generally non-functional. Tan concluded by saying that the premises were generally not habitable.

31 Wee Egk Chong said that as a result of the interview with Tan Toh Chin it was decided to subpoena Tan to give evidence on behalf of the defendant. Two attempts were made to serve the subpoena on Tan but he could not be found. However the defendant managed to speak to Tan on the telephone and an appointment was made to see Tan on 6 January 1986, for the purpose of serving the subpoena. However, when Wee and the defendant arrived at Tan`s office they had the impression that Tan was not prepared to come to court to give evidence on behalf of the defendant and Tan suggested that they go and see Henry Sia who had been the tenant of No 3 Bartley Road. So the subpoena was not served on Tan since Tan was not prepared to come to court.

32 Tan Toh Chin`s evidence was that in 1985 two persons visited him. One identified himself as a lawyer and the other as the new owner of No 3 Bartley Road. They wanted him to be a witness regarding the condition of the house No 3 Bartley Road, whether it was in good or bad condition. He told them he had no time and that he was not the tenant and told them to approach Henry Sia. He could not remember if he told them the condition of No 3 Bartley Road. At that time he was very busy and he gave them the name and address of Henry Sia.

33 In answer to the court Tan said that when these two persons visited him, Henry Sia had vacated No 3 Bartley Road about a year before and that at that time the house was fit for human habitation and was well-kept. In cross-

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examination, Tan Toh Chin denied that he told the two visitors that the condition of No 3 Bartley Road was bad and that it was worse than that as shown in the photographs. He denied that he told a pack of lies. He said he had no reason to do so.

34 Henry Sia Sik Kay (PW8) said in evidence that he was the tenant of No 3 Bartley Road and that he received the notice to quit (exh P54), but he stayed on until sometime at the end of March 1984. He had taken some photographs of the house during his tenancy (exh P55A to M). He and his wife lived in the house and his two children came at weekends. He was shown the photographs exhs P1-33 (which were taken by Rev Cliff Hunnicutt (PW1) in November and December 1984) and he said that when he moved out the compound was not in the condition shown in the photographs; the roof was not in that condition; the ceiling was not in that condition; the door did not have the two big holes; the fence was not in that condition; there was no big hole in the roof and there was no leak in the roof.

35 He said that Wee Egk Chong and the new owner of No 3 Bartley Road came to see him. They asked to see the tenancy agreement; he showed it to them. One of them showed him some photographs of No 3 Bartley Road (exhs P1-37). He told them that was not the condition of the house when he was living there. They asked him to sign some statement and be a witness for the defence. He remembered asking `how much he would compensate me to be a witness`. He further said:

> *At that moment I was a bit annoyed because he said this (witness looks at the photos) was the condition of the house I stayed in. That was why I asked how much he was going to compensate me.*

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36 To court: The compensation is for taking up my time to be a witness. He asked me to be a witness for the defence.

37 That I was staying in this kind of condition (witness looks through the photos).

38 An attempt was also made by the defendant to discredit Henry Sia. The defendant`s contention is that Henry Sia was not subpoenaed because he had asked to be paid to be a witness for the defendant. Wee Egk Chong said in evidence that he and the defendant went to see Henry Sia as suggested by Tan Toh Chin. Wee said that they showed Sia their photographs exh D5. Sia looked through them. They told him the purpose of their visit. Sia replied that if they called him as a witness to testify on behalf of the defendant, they would have to make him an `offer`. Wee understood by that to mean a payment in consideration of him giving evidence in court. He told the defendant that they should go back and discuss the matter. The matter was then discussed at the solicitors` office and it was decided that it would be grossly improper for the defendant to pay Henry Sia to come to court, to give evidence.

39 When Henry Sia was cross-examined he said he was asked to sign a statement but he refused. He denied that he would have signed the statement if they had compensated him. He said he had no idea of the amount of compensation he wanted. He only said: `How about compensation`. He denied that if he had been compensated by the defendant he would have given evidence for the defendant. He said he was not paid anything to be a witness for the plaintiffs.

40 The defendant called three of the fourteen foreign workers (DW1, DW2, DW3) , who were housed at No 3 Bartley Road by SP Chua (Pte) Ltd, to give

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evidence. Their evidence was to this effect. They moved into the house on 14 May 1984. The house was dirty and smelly. They had to clean the house and the compound, which took three days. They painted the inside of the house. They repaired the leaking roof by placing tarpauline and rubber sheets; even then they could not stop the leaks. There was no water supply for one month. Water had to be brought from the worksite in a lorry. When there was water supply the toilet could not be flushed. There were stains on the ceiling. There were holes in the door. There were stains on the sink. They did no cooking on the premises. The foreign workers stayed there until November 1984.

41 Lee Su Seng (PW 13), the maintenance supervisor of the plaintiffs, inspected No 3 Bartley Road with Rev Tay and Rev Lai in April and May 1984. He said, confirming the evidence of Rev Tay and Rev Lai, that the house was clean and fit for human habitation. He said: `With a fresh coat of paint we could straightaway move in.` He said that on 1 July, a Sunday evening, after the church service, around 8.30pm, he heard a commotion at No 3 Bartley Road. He saw a group of foreigners, ten to twenty, arrive there in a truck.

42 He spoke to the foreman and was told that the foreign workers would be staying there temporarily. After the foreign workers had moved in, he saw some of them going on the roof of the house to pluck mangoes. He saw them cooking in the house; they left the water taps leaking for weeks. In early September he saw them going on to the roof to put tar sheets on the roof and placing tiles on the tar sheets and also on the canvas. He saw them constantly moving in truck loads of junk and construction materials.

43 Henry Heng Swee Hong`s (PW 12) evidence was that No 5 Bartley Road, which is next to No 3 Bartley Road, was occupied by his mother and younger sister. In June/ July 1984 his mother told him that she was concerned

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about the noise and activities that were coming from No 3 Bartley Road in the evenings. He spoke to Rev Tay and Rev Lai to see if they could be of any assistance.

44 Arul Anandan (PW9), an advocate and solicitor living at No 2-C Eden Grove, the back portion of which has a common fence with No 3 Bartley Road, said in evidence that he moved into his house in December 1983. He noticed a few new cars parked in the compound of No 3 Bartley Road and the cars were there for two or three months or it could be longer. There was a space of time after the cars were moved out that No 3 Bartley Road was unoccupied. Then some foreign workers moved into No 3 Bartley Road sometime after the middle of June 1984. He said he was sure of this because his birthday fell on the 16 June and there was a birthday and house-warming party in his house and he took his friends around the house and when he was at the back yard he saw that No 3 Bartley Road was then not occupied by foreign workers. He also said with reference to photographs P1-P8 that when the cars were parked there, No 3 Bartley Road was not in the condition shown in the photographs and when he first moved into his own house the appearance of the house No 3 Bartley Road was in better condition than after the foreign workers had moved in.

45 Counsel for the defendant submits that the plaintiffs` witnesses Rev Tay and Rev Lai were not exactly honest. They had produced tampered minutes of the church meetings in their attempt to corroborate their oral evidence. Instead of regretting their conduct, they had tried to justify it and their conduct cast great doubts on their credibility. Counsel also submits that the evidence adduced by the plaintiffs cannot be relied on. They had produced two questionable witnesses in the persons of Henry Sia (PW8) and Tan Toh Chin (PW10). I have considered very carefully the submissions of counsel for the defendant and I see no reason to doubt the evidence of Rev Tay, Rev Lai, Tan Toh Chin and Henry

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Sia. I do not think they were dishonest witnesses. The evidence of Rev Thomas Hunnicutt (PW 14) and the evidence of Lee Su Seng (PW 13) amply corroborated the evidence of Rev Tay and Rev Lai as to the condition of the house No 3 Bartley Road at the time when the church decided to buy the premises.

46 I find that the plaintiffs` main purpose in purchasing the premises was for the immediate occupation by their missionary staff otherwise they would not have agreed to pay such a high price for the premises. The defendant was told and knew of this. I also find that the house at the time the agreement was entered into was in good habitable condition fit for immediate occupation. After the fourteen foreign workers had moved in in the middle of June 1984 and had occupied the premises for several months, the house had been damaged to a deplorable state that it was not fit for human habitation.

47 The defence of the defendant is that it was never a term of the agreement, nor was there any evidence, that the house, No 3 Bartley Road was to be in a habitable condition. There was clearly no warranty given by the defendant. The defendant submits that, even if the plaintiffs were justified in asserting that the house must be restored to a habitable state, they were not entitled to call off the sale when a relatively small sum of $43,645, as estimated by the plaintiffs` own quantity surveyor John Gunner (PW2), would have been sufficient to restore the premises to a habitable condition.

48 The defendant contends that in fact it was the rapidly failing property market that was the main reason the plaintiffs called off the sale and purchase and that the poor condition of the premises was merely an excuse. The defendant further contends that the plaintiffs must have felt piqued at the defendant`s refusal to waive the interest of about $13,867 due under cl 14 of the agreement

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and also at his refusal to allow the plaintiffs to have possession of the premises before the completion date in spite of the fact that they had paid a substantial sum of $191,500 as deposit. The defendant contends that the even before the plaintiffs` solicitors` notice of 3 December 1984 (AB21), was sent to the defendant rescinding the contract.

49 The defendant`s evidence was that as soon as he received the plaintiffs` solicitors` notice AB 18 complaining that the premises were full of junk, he immediately commenced tidying up the premises and by 1 December 1984, the premises had been cleared and were ready for handing over and the plaintiffs were so informed (AB20). On 4 December 1984, at the request of the plaintiffs, a meeting was held at the premises. The defendant contends that at the meeting it was obvious to him that the plaintiffs had no intention of completing the sale and purchase. On the same day after the joint inspection of the premises, the plaintiffs, through their solicitors, by telex AB22 informed the defendant that they were entitled `to repudiate` (as opposed to rescission in AB21) the contract. There was no attempt made by the plaintiffs either to give the defendant a period of time to restore the premises, or to demand a deduction from the purchase price for the restoration of the building or even to retain a sum of money until the matter was resolved. The defendant contends that the plaintiffs had no intention whatsoever to put the defendant in a position to resolve the matter amicably as their primary objective was to call off the sale as quickly as possible.

50 The defendant says that he had no choice but to respond (through his solicitors) by taking the following steps:

> (1) On 7 December 1984 (AB23), giving the plaintiffs 21 days` notice to complete.

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> (2) On 15 January 1985 (AB28), forfeiting the deposits, without prejudice to any other rights or remedies available at law or equity and treating the agreement as terminated.

51 The defendant`s allegation that the plaintiffs were unwilling to complete the sale as they were annoyed by the refusal of the defendant to give early possession and to waive the interest and because of the property price failing, is completely untrue and unfounded. The plaintiffs had made arrangements with a bank for a loan to finance the purchase in May 1984. On 23 November 1984, the plaintiffs took steps to have the money available to complete the sale and the money was available up to 4 December 1984 (see AB47 to AB50).

52 Counsel for the defendant says that from the plaintiffs` solicitors` telexes to the defendant`s solicitors, the plaintiffs seem to be rescinding and repudiating the agreement at the same time. Counsel submits that the plaintiffs` telexes and amended statement of claim are so confusing that they cannot establish a legal basis to proceed on their claim.

53 It is clear that the plaintiffs rescinded the agreement when the defendant refused to restore the house to the same condition it was at the date of the agreement as that clearly showed that the defendant no longer intended to be bound by that agreement. It is necessary to construe the terms which are in the agreement read in the light of the nature of the contract and of the relevant surrounding circumstances when the contract was made.

54 In ***FA Tamplin Steamship Co Ltd v Anglo-Mexican Petroleum Products Co Ltd*** [1916] 2 AC 397 Lord Loreburn said at pp 403-404:

> *A court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And*

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> *if they must have done so, then a term to that effect will be implied, though it be not expressed in the contract ... In most of the cases it is said that there was an implied condition in the contract which operated to release the parties from performing it, and in all of them I think that was at bottom the principle upon which the court proceeded. It is in my opinion the true principle, for no court has an absolving power, but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted.*

55 Counsel for the defendant submits that it is clear law that if one buys an unfurnished house, there is no implication of law that the house is necessarily fit for human habitation, unless there is an express warranty to that effect. He cited the judgment of Swift J in ***Miller v Cannon Hill Estates*** [1931] 2 KB 113 at p 120. However, Swift J went on to say at p 121:

> *The position is quite different when you contract with a builder or with the owners of a building estate in course of development that they shall build a house for you or that you shall buy a house which is then in the course of erection by them. There the whole object, as both parties know, is that there shall be erected a house in which the intended purchaser shall come to live. It is the very nature and essence of the transaction between the parties that he will have a house put up there which is fit for him to come into as a dwelling-house. It is plain that in those circumstances there is an implication of law that the house shall be reasonably fit for the purpose for which it is required, that is for human dwelling.*

56 Here we have a case where the plaintiffs had agreed in May 1984 to purchase a dwelling house fit for human habitation and ready for occupation. The defendant was well aware of the purpose for which the plaintiffs required the house and that it was for immediate occupation. Clause 6 of the agreement provided that `the property is sold in its present state and condition` which means that the house was habitable and ready for immediate occupation. The plaintiffs had asked for early occupation soon after the agreement was signed and again in July 1984 after the foreign workers had moved in. Six months later, when the time for completion came along, the house was found to be in a

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deplorable state and unfit for human habitation. The house was not what the plaintiffs had contracted to buy. The defendant was obliged to restore the house to its original habitable condition. The refusal of the defendant to do so evinced an intention on the part of the defendant not to perform his part of the agreement and the plaintiffs were entitled to treat the defendant`s conduct as a breach going to the root of the matter and to treat themselves as discharged from further performance.

57 There will be judgment for the plaintiffs and costs. There will be an order in terms of prayers 12(a), (b), (c), (d) and (e) of the amended statement of claim.

58 The counterclaim of the defendant is dismissed with costs.

59 ***Order accordingly.***

Chua F A J

Joshua Lim (Lee & Lim) for the plaintiffs
Giam Chin Toon and Wee Eng Chong (Wee Swee Teow & Co) for the defendant

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