IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 216

Suit No 620 of 1989

Between

Allan Clinic For Women Pte Ltd

… Plaintiff

And

Mount Elizabeth Hospital Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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Allan Clinic For Women Pte Ltd v Mount Elizabeth Hospital Ltd

[1993] SGHC 216

Suit No 620 of 1989
Warren Khoo L H J
16 September 1993

1 **Judgment:**

2 Coram: Warren L H Khoo J

3 C A V

4 J u d g m e n t

5 This is a claim by the plaintiffs for certain reliefs arising from the failure by the defendants to grant them an option to purchase 3 units (referred to as consulting suites) in that part of the Mount Elizabeth Hospital known as the Mount Elizabeth Medical Centre in pursuance of a settlement agreement alleged to have been reached between representatives of the parties orally on 25 April 1987 and evidenced by an exchange of letters on various dates in May 1987.

6 The plaintiffs are a company under which Dr Allan Ng practised and practises as an obstetrician and gynaecologist at the three units in the building, known as units #14-06/07/08. I shall refer to these as "the units". They also

owned and still own units #07-07/08 and #12-03. I shall refer to these as "the other units". The tenancy agreement in respect of the units was entered into on 18 July 1983 for a term of three years commencing on 1 September 1983 and ending on 31 August 1986. The other units were tenanted by the plaintiffs to other doctors. The tenancy agreement in respect of the units contained an option clause whereby the tenancy might at the option of the plaintiffs be renewed for a further term of three years at the rent specified.

7 Dr Ng had even before entering into the tenancy agreement in 1983 tried to buy the units. At that time he was told that the policy of the defendants was not to sell but to let. He continued with his attempts to buy the units after entering into the tenancy agreement in July 1983. In July 1985, the ownership of the defendants changed hands. He carried on discussions with representatives of the new owners. These discussions culminated in what Dr Ng thought was an agreement reached on 26 January 1987 when all the terms of a renewed tenancy agreement had been agreed with an option to purchase the units at a price "not exceeding $700 per sq ft." The terms of the sale and purchase agreement upon the exercise of the option were set out in Schedule A to the draft tenancy agreement. The full terms of the option were in cl 5 (5) of the draft tenancy agreement as follows:

8 "(5) In consideration of the sum of $1/- now paid by the tenant to the landlord (the receipt of which the landlord hereby acknowledges) the landlord hereby agrees that if the tenant shall desire to purchase the premises hereby demised and shall after not less than twelve (12) months into the term hereby granted give to the Landlord 1 month notice in writing of such desire then the Landlord hereby covenants that he will upon the expiration of such notice and upon payment of the non-refundable 10% of the purchase price according to the terms of the Sale and Purchase Agreement in the form set out under Schedule

Version No 1: 11 Sep 2026 (01:05 hrs)

A together with all arrears of rent up to the expiration of the notice assure the demised premises to the tenant at a price not exceeding $700.00 per square foot. The tenant shall not be released from any or at all of his obligations under this Tenancy Agreement until the Sale and Purchase of the Demised Premises is completed. The Landlord hereby covenants to execute the Sale and Purchase Agreement in the form set out under Schedule A provided always that the terms under the Sale and Purchase Agreement are satisfied and the tenant is not more than 1 month in arrears with his rental and or in breach of any of the other covenants herein."

9 Schedule A as finally agreed consisted of six clauses. It provided for the payment of a non-refundable deposit of 10% of the purchase price and for the completion of the purchase within 3 months from the date of signature. It also provided for the title being free from incumbrances, and for the application of the Law Society's Conditions of Sale 1981.

10 As I said, Dr Ng thought that an agreement had been reached for a tenancy agreement including the terms of the option for the purchase of the units. He was thus quite surprised when on 12 March 1987, without any warning, the defendants wrote to the plaintiffs purporting to withdraw all offers which they had made and to reject all counter-offers which the plaintiffs had made. The plaintiffs commenced action in Suit No 1010 of 1987 claiming a declaration that he was entitled to a renewed tenancy of two years commencing 1 September 1986 (following the expiry of the 1983 tenancy) with an option to purchase the units in terms of cl 5(5) above.

11 At this point, I must digress and mention what Dr Ng explained was the reason for the price for the units being stated in the draft tenancy agreement as "not exceeding $700 per sq ft" rather than a fixed figure. It reveals a somewhat

Version No 1: 11 Sep 2026 (01:05 hrs)

disquieting side of the business practices of the defendants. According to Dr Ng, the defendants' representatives had proposed pegging the price to the number of patients that Dr Ng would admit to the hospital, offering a discount on the purchase price depending on the number of patients the doctor would admit to the hospital, the more patients admitted, the larger the discount. A discount of $50,000 to $100,000 and 200 admissions a year were mentioned. Dr Ng thought that such an arrangement would be unethical. He told the defendants' representatives that he was not prepared to give them a guarantee of the number of admissions, and that he would pay the full maximum of $700 if whatever discount they proposed to give him would involve doing something unethical.

12 The parties continued discussions after the commencement of the 1987 suit. This time, the defendants had fresh ideas, but they still had an eye on the hospital admissions. As the plaintiffs owned the other units, suggestions were made by the defendants' representatives for the sale of the other units to the defendants or for the letting by the plaintiffs to the defendants of the other units for re-letting to doctors of the defendants' choice. The parties settled on the latter alternative, that is, the defendants would sell the units to the plaintiffs and the plaintiffs would let the other units to the defendants.

13 At a meeting held on 25 April 1987, the parties reached an agreement not only to settle the suit but also for the sale of the units and the letting of the other units. This was subsequently recorded in an exchange of letters on various dates in May 1987. The oral agreement to settle as evidenced by the correspondence is referred to in the pleadings as the settlement agreement, and I shall for convenience follow this when referring to it or to the correspondence evidencing it.

Version No 1: 11 Sep 2026 (01:05 hrs)

14 So far as the option to purchase the units is concerned, it is necessary only to refer to the letter dated 18 May 1987 from the defendants to the plaintiffs. It dealt with the matter in the following terms:

15 (d) Mount Elizabeth Hospital Ltd and Allan Clinic for Women shall forthwith execute a new lease in favour of Allan Clinic for Women for 2 years for the premises #14- 06/7/8 at Block A Mount Elizabeth Hospital at the rate of S$13,558.10 per month inclusive of service charges. The new lease shall include an option to purchase the said units at $650/- p.s.f. The Option shall be valid from 1st June 1987 to 31st May 1988 12 noon both dates inclusive thereafter the Option shall lapse and the tenant shall have no recourse for action against Mount Elizabeth Hospital Ltd for failing to exercise the Option.

16 On receipt of this letter, it occurred to Dr Ng that the date of commencement of the new lease should be stated and that it should be retrospective to 1 September 1986 as the previous tenancy had expired on 31 August 1986. The defendants' representative told him that the date would be included in the tenancy agreement to be sent to the plaintiffs.

17 It was part of the settlement agreement that the plaintiff would discontinue Suit 1010 of 1987, and that the defendants would also withdraw the allegations in their defence in that suit. In pursuance of this agreement, the suit was discontinued and the defence withdrawn. The parties also refined their agreement as to the commencement dates of the tenancies in respect of the other units.

18 On various dates in May and June, the plaintiffs made repeated requests for the tenancy incorporating the option which had been agreed for their formal

Version No 1: 11 Sep 2026 (01:05 hrs)

execution. On 10 June 1987, the defendants sent a draft tenancy agreement. The draft contained an option to purchase in cl 5(5) in the following terms:

19 (5) In consideration of the sum of $1/- now paid by the Tenant to the Landlord (the receipt of which the Landlord hereby acknowledges) the Landlord agrees that if the Tenant shall desire to purchase the premises hereby demised the Tenant shall give to the Landlord 1 month's notice in writing of such desire then the Landlord hereby covenants that he will upon the expiration of such notice and upon receipt of the non-refundable 10% of the purchase price according to the terms of a Sale and Purchase Agreement to be approved by the Controller of Housing with all arrears of rent up to the expiration of the notice assure the demised premises to the Tenant at a price of $650.00 per square foot. The Tenant shall not be released from any or all of his obligations under this Tenancy Agreement until the sale and purchase of the Demised Premises is completed.

20 The Landlord shall then execute the Sale and Purchase Agreement provided always that the terms under the Sale and Purchase Agreement are satisfied and the Tenant is not more than one (1) month in arrears with his rental and/or one (1) month in arrears with his rental and/or in breach of any of the covenants herein.

21 ALSO PROVIDED that approvals from all the relevant authorities as well as the Landlord's parent company and/or majority shareholder have been obtained for the sale and purchase.

22 This Option shall be valid for a period of one (1) year from 1 June 1987 to 31 May 1988 noon both dates inclusive. Thereafter the Option shall lapse and

Version No 1: 11 Sep 2026 (01:05 hrs)

the Tenant shall have no recourse against Mount Elizabeth Hospital Ltd for failing to exercise the option.

23 This formulation was not acceptable to the plaintiffs. It differed from the option agreed in January 1987 in at least two respects. One is that, instead of Schedule A, the terms of the sale and purchase agreement were "to be approved by the Controller of Housing". The other was that the sale was subject to the approval of "all the relevant authorities as well as the landlord's parent company and/or majority shareholder."

24 Dr Ng was anxious to proceed with the purchase. He had at this time secured the financing for the purchase of the units. He was concerned about any delay in the approval by the Controller of the form of the sale and purchase agreement, and about the risk of the option period running out before the form was approved. He consulted solicitors and was advised that since the parties had agreed previously that Schedule A was to be the form, he should ask the defendants for the inclusion of Schedule A. In his view, since all the terms except the price had previously been agreed, it was only necessary to follow the wording of the January 1987 version of the option and to amend the price from "not exceeding $700 per sq ft" to the now agreed price of $650 per sq ft, and to insert the agreed period for the exercise of the option, which was now from 1 June 1987 to 31 May 1988.

25 The plaintiffs therefore by letter dated 19 June 1987 asked the defendants to send an amended draft containing an option in these terms, and including Schedule A. On 20 June 1987, the defendants replied, saying that Schedule A was not applicable as it assumed that the strata title had been issued, which was not the case. The plaintiffs did not agree and maintained that Schedule A was appropriate.

Version No 1: 11 Sep 2026 (01:05 hrs)

26 On 4 July 1987, the defendants sent a fresh draft. This version not only contained the previous formulation that the terms of the sale and purchase would be in a form to be approved by the Controller, it also contained, in cl 5 (5) (b) a provision that the property would be sold "subject to all extension projects" to the hospital undertaken by the defendants and the "consequential variation of the approved share value of the property."

27 Dr Ng was not agreeable to these provisions. Since the defendants said that Schedule A was not appropriate, he then asked for a form of sale and purchase agreement that he could use to effect the purchase straightaway. The defendants told him that they could not do so as they wished to make amendments to it.

28 At this point, the fact that the sale of the units was subject to the Sale of Commercial Properties Act had been raised. There was (and is) a form prescribed by the rules made under the Act for the sale of commercial properties under construction (Form D). For units that had been constructed, although no form of agreement was prescribed, it is common ground that a form specially approved by the Controller would be used. When the defendants raised the question of compliance with the Act, the plaintiffs' solicitors then asked that the tenancy agreement should provide for a Form D already approved by the Controller, rather than a form yet to be approved as the defendants had proposed. The defendants did this by their solicitors' letter of 7 July 1987.

29 The ensuing months saw the parties' solicitors engaged in a protracted correspondence. The plaintiffs basically wanted to get on with the purchase and would be prepared to accept any form of agreement which had been approved. The defendants, on the other hand, insisted that the sale must be on a form yet to be approved by the Controller.

Version No 1: 11 Sep 2026 (01:05 hrs)

30 The hospital extension programme

31 There was a reason for the position taken by the defendants, and I now need to say a few words about that. At about the time of the settlement agreement in April 1987, the defendants had conceived of plans to expand the hospital buildings. These included the extension of the Medical Centre by the addition of consulting suites, the extension of the hospital block by the addition of operating theatres, additional labour and delivery suites, an eye institute and a cancer centre, and the addition of car parking and other common facilities.

32 Many of the consulting suites in the Medical Centre (Block A), however, had been sold to doctors practising there. Each of them carried a share value approved by the Commissioner of Buildings and included in the registered strata title plans, as did other parts of the hospital complex. The extension programmes would alter the approved share values of existing units. It would also delay the issue of subsidiary strata certificates of title in respect of all units. The defendants had to have the consent of all the owners of the units to the extension and to the consequential changes in the share values attached to their respective units. They also required protection against any claims arising from the delayed issue of the certificates of title. They were prepared to compensate the owners for their consent and for giving up any claim for the delay in the issue of title. A committee representing the doctor-owners was formed to negotiate terms with the defendants. Dr Ng was voted on to the committee. He remained on it until 17 January 1988, when he resigned. After some initial differences, agreement was reached with all the owners by 5 January 1989. It must have been a monumental exercise, as it involved obtaining the consent and agreement of scores of owners and their mortgagees, but to the credit of everyone concerned, that was accomplished.

Version No 1: 11 Sep 2026 (01:05 hrs)

33 I have before me a copy of the agreement dated 5 January 1989 in respect of unit #12-03 owned by the plaintiffs (one of the "other units"). I assume that all the others were in substantially similar terms. Basically, it provided for the payment by the defendants of liquidated damages for the delay in the issue of title up to the date when the defendants had obtained the consents of all the owners and their mortgagees to the extension project. It also provided for the payment of a flat sum of $225,000 for the unit. The owners were to give their consent to the extension project and to the consequential variation of the approved share value in respect of the unit. The owners were also not to commence or maintain proceedings in regard to the delay in the issue of title. The agreement was subject to certain conditions, to which I need not refer.

34 Minor differences arose afterwards resulting from the addition of an extra floor further affecting the share values of units. The doctor- owners made representations, and the defendants agreed to pay an additional sum of $25,500 per unit on an ex gratia basis without admission of liability. I am told that the extension project proceeded to a successful conclusion.

35 Type A form of agreement

36 To return to the subject of the sale of the units, during the remaining months of 1987, the plaintiffs and their solicitors tried to persuade the defendants to get the defendants to agree to use a form of agreement already approved, but the defendants steadfastly refused. The plaintiffs' solicitors suspected that there must be such a form in existence. So they made inquiries with the Controller, and by a painstaking process, they were able to reconstruct a form of agreement which was likely to be the approved form. They did not succeed in doing so until shortly before the writ in the present action was commenced and after the exercise of the option (see below). This form of

Version No 1: 11 Sep 2026 (01:05 hrs)

agreement was known as Type A. It was a form which had been approved in July 1986 for the sale of the then existing consulting suits and converted shop units in Block A. It was basically a modification of the Form D prescribed by the rules. The term was used in contrast with Type B, which was for the sale of new converted consulting suits on the 17th storey of the block.

37 It is clear that Type A, as approved by the Controller on 31 July 1986 would have been the appropriate form to use for the sale of the subject units, or at least the closest to the appropriate form. However, through all these months of protracted correspondence and attempts on the part of the plaintiffs to resolve the impasse, the defendants did not make any mention of the existence of the Type A agreement, let alone offer to use it. I do not know the reason for this, as the defendants chose not to give evidence, but it is noteworthy that in Type A, there was a provision for the payment of liquidated damages for delay in the issue of title. The amendments which the defendants were proposing to the Controller would incorporate a consent from the purchaser to the extension programme and an agreement to a longer completion date. The effect would be to eliminate the need to pay compensation and to eliminate or reduce the liability for delayed issue of title.

38 Forcing the issue

39 The futile correspondence between the plaintiffs and the defendants about the sale of the units continued into the early months of 1988. The time prescribed for the exercise of the option was running. The plaintiffs and their solicitors decided to do the best they could to salvage the situation. They decided to force the issue. On 25 March 1988, the plaintiffs and their solicitors in separate letters to the defendants stated that the plaintiffs were exercising the option to purchase the units. A cheque for $314,990, representing 20% of the

Version No 1: 11 Sep 2026 (01:05 hrs)

purchase price on the basis of a floor area of 2,423 sq ft, was sent. The 20% was in accordance with what the plaintiffs' solicitors were able to make out, from such documents as the defendants had provided, was the amount payable on the exercise of the option under the approved option and sale and purchase agreement. On 19 April 1988, the defendants returned the cheque, maintaining their by now familiar stand.

40 The plaintiffs took the position that upon the exercise of the option they became purchasers in possession and they were not liable to pay rent. However, on 26 May 1988, they did send a cheque for $24,037.80, making it clear to the defendants that this was to account of any rent payable, and to preclude any argument that they were then in arrears of rent. The sum of $24,037.80 was the equivalent of two months' rent at the rate of $12,018.90, the rate stipulated in the settlement agreement, inclusive of service charges.

41 On 19 May 1988, the plaintiffs lodged a caveat with the Registry of Land Titles to protect their interest as purchasers. The validity of the caveat is the subject matter of Originating Summons No 943 of 1988, of which more later.

42 The defendants did not accept the position that the plaintiffs were purchasers in possession. They said that the plaintiffs were mere tenants at will as they had failed to execute the tenancy agreement proffered. On 26 January 1989, the defendants wrote to the plaintiffs giving the plaintiffs notice to vacate the premises on or before 25 July 1989.

43 On 29 March 1989, the plaintiffs took out the writ in this action seeking specific performance and other reliefs. The defendants filed a counterclaim for possession of the units, arrears of rent at $12,018.90 per month from 1 April

Version No 1: 11 Sep 2026 (01:05 hrs)

1988 to date of payment or judgment, and mesne profits from 26 July 1989 and/or double rent until delivery of possession.

44 At the trial, only Dr Ng gave evidence. The defendants' counsel submitted at the end of the plaintiffs' case that they had no case to answer, and he elected not to call evidence.

45 The Defence

46 The defendants pleaded a whole host of defences, but at the conclusion of the trial, the case put by defence counsel may be summarised as follows. Firstly, he submitted that what the parties had discussed and agreed before the 1987 suit was relevant. He submitted that one had to look at these antecedent matters to ascertain the factual matrix, to ascertain the terms and subject matter of the compromise reached on 25 April 1987. He stressed that before the 1987 suit, the parties had agreed the following terms for the exercise of the option:

47 (1) the plaintiffs must give the defendants one month's notice of their intention to exercise the option;

48 (2) until the completion of the sale and purchase, the plaintiffs would continue to be treated as tenants and were bound to pay rent as tenants;

49 (3) the plaintiffs also had to pay the nominal consideration of $1 for the grant of the option itself.

50 Counsel said that the settlement agreement reached in April 1987 was to settle the plaintiffs' claim in the 1987 suit. In that suit, the plaintiffs' claim was an option in terms of cl 5(5) of the draft tenancy agreement agreed in January 1987 in terms set out above. Counsel pointed out that in all drafts of the tenancy

Version No 1: 11 Sep 2026 (01:05 hrs)

agreement after the April 1987 settlement, the three elements just mentioned were repeated and no objection was ever raised by the defendants to their inclusion in the drafts. Counsel suggested that if the parties had been asked on 25 April 1987 what was the form of the option and the sale and purchase agreement they had in mind, they would have said cl 5(5) agreed in January 1987. This being the case, the option was never properly exercised by the plaintiffs in that they did not comply with the three terms relating to and governing the exercise of the option.

51 My views

52 I must say I find defence counsel's argument a little difficult to follow. The settlement agreement, as evidence by the letter from the defendants' letter of 18 May 1987 provided simply that the tenancy agreement would contain an option to purchase the units at the price of $650 per sq ft. It seems to me that the defence counsel's argument would be tantamount to rewriting the contract by importing the terms of cl 5 (5) of the draft tenancy agreement agreed in January 1987. I do not think that is warranted. If this had been the intention, the defendants could easily have made a reference to that in the letter. They did not do so.

53 The argument that, if asked, the parties would have said that the option clause contemplated by the 18 May letter would of course have been cl 5(5) of the January 1987 agreed draft, does not in my view take the matter far enough. If any such question is to be asked, a further question should be asked, and that is, if the parties had known that Schedule A referred to in cl 5 (5) was not in compliance with the Act and the rules, would they still have opted for the cl 5 (5) formula which required the parties to proceed in accordance with Schedule A? The answer is, obviously, no.

Version No 1: 11 Sep 2026 (01:05 hrs)

54 Counsel for the plaintiffs submitted that if anything is to be implied into this part of the letter of 18 May 1987, it must be that it should be implemented in accordance with the law.

55 I am in entire agreement with this view. Of the two contending interpretations of the option clause in the letter, one interpretation would involve the importation of matters antedating the 1987 suit which would result in the parties carrying out the agreement in a way that is said to contravene the law, the other interpretation would make it possible for the parties to implement the option clause in a way that is free of any question of illegality. One interpretation would result in upholding the agreement, the other would result in rendering it unforceable, or would result in the parties or one of them committing an offence. I have not the slightest doubt in my mind that I must act on a presumption that the parties intended to act in accordance with the law. There is no suggestion that the parties or either of them in fact intended to contravene the law or to carry out the agreement in an illegal manner. I must also lean in favour of upholding the bargain which was struck by the parties, rather than destroying it, especially as the parties have acted upon the agreement reached; the plaintiffs have discontinued the 1987 suit, and the defendants have withdrawn their defence in that suit.

56 I am in fact somewhat at a loss as to what exactly is the defendants' stand in regard to the legality or propriety of Schedule A. Defence counsel referred to s 5 of the Act. He said that this section only renders null and void any term or condition of an agreement which is inconsistent with the terms and conditions prescribed by the rules, and only to the extent of the inconsistency. He also referred to the decision of the Court of Appeal in Mun Heang Realty Pte Ltd v Fu Leong Lithographer Pte Ltd (1993) 1 S L R 713 to the effect that the Act does not preclude the operation of the doctrine of estoppel, nor does it preclude

Version No 1: 11 Sep 2026 (01:05 hrs)

variation or waiver of the prescribed terms and conditions by conduct. It seems to me that what counsel says is somewhat of a departure from the view taken by the defendants following the settlement agreement. I do not know really what to make of it.

57 If Schedule A was not in order, there was always Type A. But, as has been shown, the defendants studiously avoided it, or any mention of it. Instead, they preferred, for reasons of their own, to use a form with amendments which had yet to be approved by the Controller in order to take into account the hospital extension programme and the resultant delay in the issue of title and change in share value. I am of the view that they were wrong in doing so, vis-a-vis the plaintiffs. I accept Dr Ng's evidence that the settlement agreement was reached without any reference to the hospital extension programme and these consequential matters. There was also no reason to interpret the settlement agreement in a way which would delay the exercise of the option until the Controller had approved the amendments to the prescribed form. This would make the period for the exercise of the option uncertain, quite contrary to the period clearly specified in the letter of 18 May 1987, i. e. the period from 1 June 1987 to 31 May 1988.

58 It may be that Type A, too, although approved by the Controller, might not be suitable in every respect for the sale of the units to the plaintiffs. I do not know whether, for instance, it would result in the plaintiffs getting a windfall in the form of liquidated damages already accrued even before the settlement agreement. But what is relevant is that the defendants consciously avoided it, while I am sure they could have brought it out into the open and could, if necessary, have sought a modification of any specific points so as to bring the form into line with the intent of the settlement agreement. What they offered, instead, was a stonewall of a form yet "to be approved by the Controller" at

Version No 1: 11 Sep 2026 (01:05 hrs)

some indefinite future date containing terms (consent to change of share value etc) quite contrary to the spirit and intention of the settlement agreement.

59 In view of the defendants' intransigence, the plaintiffs took, in my view, the perfectly right course of exercising the option in the way they did by their and their solicitors' letter of 25 March 1988. It seems to me that, forced into such a situation by the defendants, that was the best that anyone could have done. For reasons already stated, I reject the defendants' contention that the plaintiffs should have followed the provisions of cl 5(5) in the draft tenancy agreement agreed in January 1987.

60 The position as I see it is this. The defendants were obliged to grant an option. They failed to do so. This calls to mind the adage that equity looks on that as done which ought to be done. I would treat the option contemplated by the settlement agreement as having been granted and having been available to the defendants for them to accept and convert into an enforceable contract for the sale and purchase of the units. I hold that the option was validly exercised by the plaintiffs on 25 March 1988. I also hold that the plaintiffs were in lawful possession of the premises pending completion of the sale. I have no doubt that it had been the intention of the parties all along that the plaintiffs would remain in possession as tenants until the sale was completed.

61 The reliefs

62 The plaintiffs in my view, therefore, succeed in their claim for specific performance. The units are to be sold to them at the price of $650 per sq ft as provided in the settlement agreement.

Version No 1: 11 Sep 2026 (01:05 hrs)

63 The plaintiffs have been in possession since the date of the exercise of the option. It seems to me that they have to pay something, either by way of an occupation rent or interest. Had the parties proceeded on the Type A form of sale and purchase agreement, the plaintiffs would have had to pay interest for any delay in the payment of the instalment payments of the purchase price. The rate fixed by that form of agreement is 2% above the average of the prevailing prime rates of the four major banks in Singapore (i. e. DBS, OCBC, OUB and UOB). However, the provisions in Type A for the payment of the instalments are difficult to apply in the events that have happened. I also do not know whether separate certificates of title have been issued in respect of the units and therefore whether completion can now take place. I think I should hear further submissions as to how this whole question of an occupation rent or interest should be dealt with.

64 I turn to the other units, which the defendants had agreed to take over as landlords. Regarding units 07-07/08, the facts are as follows. At the date of the settlement agreement, the units were tenanted to Low Lip Pin Pte Ltd. The tenancy would expire on 30 September 1988. The agreement between the plaintiffs and the defendants was that:

65 (a) if the tenants agreed to relinquish the tenancy before l July 1987, the defendants would take over on 1 July 1987 for 3 years with an option to renew for a further 3 years;

66 (b) if the tenants wished to continue with the plaintiffs until the expiry of the tenancy on 30 September 1988, then the defendants would take over on 1 October 1988 for 21 months, with an option to renew for a further 3 years. In the event, the tenants agreed (by letter dated 18 May 1987) to terminate the tenancy with the plaintiffs on 30 June 1987 subject to the defendants agreeing

Version No 1: 11 Sep 2026 (01:05 hrs)

to sub-let the units to them. However, because of the disputes between the plaintiffs and the defendants, the defendants did not take over. The plaintiffs continued to receive rent until the expiry of the tenancy at the end of September 1988. The defendants did not take over on 1 October 1988, as had been agreed, and did not pay rent to the plaintiffs. On the other hand, the plaintiffs, acting on the basis that the defendants had, or should have, taken over as landlords, refrained from collecting rent from the tenants. They would look to the defendants for the rent agreed in the settlement agreement. The evidence is that the tenants occupied these units until 30 September 1989, but no one collected any rent from them.

67 The plaintiffs claim on the basis that the defendants having agreed to take up the units as the plaintiffs' tenants from 1 October 1988, should pay rent and maintenance charges at the agreed sum of $9,560 per month for the initial term of 21 months. That works out to $200,760.

68 As for unit 12-03, under the settlement agreement the defendants were to take over from 7 May 1988 for two years in the first instance. They were to pay rent and maintenance charges at the rate of $4874.35. The total claimed for the two years is $116,984.40.

69 Defendants' counsel submitted that the plaintiffs should have mitigated their losses. He said that at least by the middle of 1988, after the plaintiffs' purported exercise of the option, the plaintiffs should have realised that the defendants were not going to take up the head tenancy, and the plaintiffs should have let both sets of units. However, the point of mitigation was not pleaded, nor was Dr Ng asked any question in relation to this. As plaintiffs' counsel pointed out, the plaintiffs might well have had difficulty securing any tenant as they could not offer anything other than a month to month tenancy in view of

Version No 1: 11 Sep 2026 (01:05 hrs)

their disputes with the defendants. Such a tenancy would be quite unattractive to a specialist seeking to establish a practice.

70 The burden is on the defendants to show that the plaintiffs could reasonably have been able to take the mitigating measures suggested. I do not think the defendants have succeeded in doing that at all. They should pay the plaintiffs the two sums above in respect of the two sets of units. They should also pay interest at the rate of 6% on each of these sums from the mid point of the period in respect of which the rent was payable. That means in the case of the units 07-07/08 the interest should run from the mid-point in the 21-month period from 1 October 1988. In the case of the unit on the 12th floor, the interest should run from the mid-point in the 24-month period from 7 May 1988. In both cases, the interest is to be paid up to the date of judgment.

71 The plaintiffs also claim damages. They claim that, had the defendants granted them the option, they would have been able to obtain compensation from the defendants for consenting to the hospital extension and to the change in the share value of each unit. They say that there is no reason why they should not have consented, just as they had consented in respect of the other units owned by them. As the hospital extensions have now been completed, I would assume that the share values of the units must also have been altered. In these circumstances, I think the plaintiffs have a good claim. I would award them the sum of $250,500 in respect of each of the three units the subject of this suit. This was the total sum offered and accepted in respect of units in general. That makes $751,500. The plaintiffs might also be entitled to interest. I would need to hear further submissions as to when the amount ought to have been paid. The plaintiffs, no doubt correctly, have not raised any question about any liquidated damages payable under Type A or otherwise, and I do not need to be concerned with it.

Version No 1: 11 Sep 2026 (01:05 hrs)

72 In addition, there is a claim for the return of the two months' rental deposit amounting to $24,052.10, with some deductibles. I would deal with that also after being provided further details. Counsel could perhaps agree this relatively small amount.

73 I dismiss the defendants' counterclaim, simply on the basis that the defendants had no right to force on the plaintiffs any tenancy agreement in the terms they insisted upon. The plaintiffs were within their rights under the settlement agreement to refuse to accept any of the draft tenancy agreements in the terms proposed by the defendants.

74 As for costs, I think there should be only one set of costs for the claim and counterclaim. I need to make a special order. Because of the unreasonable position taken by the defendants, the plaintiffs had to engage solicitors to assist him in unravelling the form of agreement that should be used for the purchase of the units. The plaintiffs started consulting solicitors after receipt of the defendants' letter and draft on 10 June 1987 containing the unacceptable terms. I am of the view that they should be compensated by way of costs or by way of damages on a full indemnity basis all the professional fees and disbursements which they had to incur from that time onwards up to the commencement of this action for and in connection with their attempts to secure an acceptable form of documentation for the purchase of the units, including the costs incurred in reconstructing the Type A form of agreement. The plaintiffs should have the costs of the action from its commencement (including the costs of the counterclaim) on a party and party basis. He pays his own conveyancing costs in respect of the units to be conveyed to him in pursuance of this judgment.

75 I reserve for correction or decision at the further hearing any errors or omissions in respect of the reliefs granted. In particular, I would like to see

Version No 1: 11 Sep 2026 (01:05 hrs)

whether there is any need to deal with the other reliefs asked for by the plaintiffs which I have not so far mentioned.

76 It remains for me to mention originating Summons No 943 of 1988. The summons was listed for hearing with this suit, but the parties proceeded on the basis that it need not be heard, as the result of my determination of this suit would have a direct bearing on these proceedings. I direct that the originating summons be brought before me for disposal at the same time as the further hearing mentioned above.

Warren Khoo L H J

Davinder Singh for the plaintiffs
V K Rajah for the defendants

Version No 1: 11 Sep 2026 (01:05 hrs)