IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 150

Suit 109/1990 and 441/1992

Between

Lee Tat Realty Pte Ltd

… Plaintiff

And

Limco Products Manufacturing Pte Ltd and Others and Another Action

… Defendant

GROUNDS OF DECISION

Landlord and Tenant — Recovery of possession; Landlord and Tenant — Covenants

Version No 1: 20 Nov 2026 (00:35 hrs)

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Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd and Others and Another Action

[1998] SGHC 150

Suit 109/1990 and 441/1992
Chao Hick Tin J
02 May 1998

Judgment:

CHAO HICK TIN J

These are two actions consolidated to be heard together pursuant to an order of court dated 23 November 1996. In Suit No 109/90, the plaintiff is Lee Tat Realty (Pte) Ltd (Lee Tat), who is the owner of lot 626 TS17 together with a seven-storey building erected thereon and known as Soo Poo Flatted Factory (hereinafter referred to as `the building` or `the premises` as may be appropriate). By a tenancy agreement dated 18 March 1989 made between Lee Tat and Limco Products Manufacturing Pte Ltd (Limco), the former demised the premises to the latter for a term of three years with effect from 15 January 1989 at a monthly rent of $35,000. By this action Lee Tat sought to recover possession of the premises, and mesne profits, on the ground that Limco had breached the terms of the lease agreement and had failed or neglected to remedy the breaches in spite of the fact that a notice had been given.

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2.There are two other defendants to S 109/90. As no appearance was entered by them, default judgment was accordingly obtained against them. Nothing in the present trial concerned them except that they were the two entities to whom Lee Tat alleged Limco had sub-letted, or given possession of, a portion of the premises.

3.In the other action, Suit No 441/92, where Limco is the plaintiff and Lee Tat the defendant, Limco claims for the refund of the security deposit upon Limco giving up possession of the premises on the expiry of the duration of the tenancy. Lee Tat asserts that it is entitled to forfeit the deposit because Limco has not restored the premises to the condition as at the commencement of the tenancy.

4. ***The complaints***

The bases upon which Lee Tat sought to forfeit the lease and recover possession of the premises were set out in a letter of 22 December 1989 from Lee Tat`s solicitors to the solicitors of Limco (`the notice`). As the validity of this notice is challenged by Limco, I shall set it out in full:

> *Pursuant to s 18(1) of the Conveyancing and Law of Property Act (Cap 61), we hereby give your clients notice on behalf of our clients that our clients intend to enforce the forfeiture of the lease by reason of the following breaches:*
>
> (1) In breach of cll 3(4), 3(5) and 3(6), your clients have failed to maintain the demised premises in good order and condition.
>
> (2) In breach of cl 3(9), your clients have used the building or part thereof otherwise than as office and factory for light industries, in particular, using the second and fourth floors as warehouse.

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> (3) In breach of cl 3(11), your clients have used the demised premises for retail or warehouse sale, in particular, using the ground floor as a demonstration cum sales room for computers.
>
> (4) In breach of cll 3(9), 3(10) and 3(13), your clients have used part of the premises as sleeping quarters for persons other than the watchman or security guards.
>
> (5) In breach of cl 3(15), your clients have installed electrical fittings, glass doors in place of existing wooden doors and have made alterations and additions without our clients` written consent.
>
> (6) In breach of cl 3(33), your clients have signed, or sub-let or part with the possession or part of the demised premises to SMI Pte Ltd and MCM Singapore Pte Ltd.
>
> (7) In breach of cl 3(34), your clients have fixed or otherwise exhibited upon the demised premises signs or advertisements on the exterior of the demised premises without the consent of the landlord.
>
> *In accordance with s 18(1) of the Act referred to above, we hereby give your clients notice that in so far as the breaches mentioned above are capable of remedy, the breaches must be remedied within seven (7) days of the date hereof and in any case, reasonable compensation in money must be made to our clients. Unless all these breaches are rectified within seven (7) days from the date hereof, our clients shall proceed with such application as they may think fit and in the meantime, our clients reserve all their rights.*

5.On 29 December 1989 Limco`s solicitors replied to the notice and gave the following answers to the allegations:

> 1 Your para (1)
>
> Our clients deny the allegation. If there are specific areas of failure to maintain the premises, please specify.
>
> 2 Your para (2)
>
> The building is used as a factory by our clients to manufacture its products, ie personal computers. After manufacturing, it is only natural that our clients have to store the boxes containing personal computers in the factory, hence one would find a store in every factory. It would be unreasonable to suggest that by storing its own goods, a building has become a warehouse.

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> 3 Your para (3)
>
> The ground floor is the reception cum waiting area and showroom for our clients` products. It is only natural for a light industry factory to display its products to visitors or prospective buyers. We cannot see how this amounts to a breach of cl 3(11) of the tenancy agreement and we also cannot see how the use of the ground floor as showroom could hurt your clients in any way.
>
> 4 Your para (4)
>
> Our clients have not permitted any part of the premises to be used as sleeping quarters for persons other than the watchman or security guard.
>
> 5 Your para (5)
>
> Our clients deny having made any alterations to your clients` fixtures and fittings. In any event, even if there are minor alterations, your clients are protected by cll 3(46) and 3(47). We cannot see how the reasonable use of the premises can affect your clients` interest.
>
> 6 Your para (6)
>
> Our clients deny having parted possession of any part of the premises as the companies mentioned are associate companies who are licencees.
>
> 7 Your para (7)
>
> Our clients deny having breached cl 3(34). Even if they are in breach, it is a technical one. Our clients hereby request your clients` permission to exhibit their registered name and logo on the exterior of the demised premises.

In this reply Limco also mentioned the fact that it had complained about leaks in the roof which Lee Tat refused to attend to and said `the leaks started a few months after our clients went into possession and could not have been due to wear and tear.`

6.On 2 January 1990 Lee Tat`s solicitors merely noted the explanations of Limco and said it would let the court decide the matter. Suit No 109/90 was commenced on 17 January 1990. Limco has raised three defences to the claim

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for forfeiture: (i) the notice of 22 December 1989 was bad; (ii) Limco did not commit any breach as alleged; (iii) even if Limco did commit any breach, in the circumstances, it be granted relief against forfeiture.

7. ***Validity of notice***

I shall first examine the issue of the validity of the notice. Under s 18(1) of the Conveyancing and Law of Property Act it is provided that a right of re-entry or forfeiture for breach of covenants in a lease shall not be enforceable by action or otherwise unless a notice `specifying the particular breaches complained of ...` has been given and the tenant must be given a reasonable period of time to remedy the breach, if capable of remedy or to make reasonable compensation in money.

8.Limco contends that the notice failed to satisfy the requirement prescribed by s 18. ***Woodfall`s Law of Landlord and Tenant*** , Vol 1 at p 865, has this to say:

> *The notice ought to be such as will enable the tenant to understand with reasonable certainty what it is that he is required to do, and so distinct as to direct the attention of the tenant to the particular things of which the landlord complains in order that the tenant may have an opportunity of remedying them before an action for forfeiture is brought against him.*

A similar statement of law is set out in 27 ***Halsbury`s Laws of England*** (4th Ed) at para 434.

9.The passage in ***Woodfall*** was taken from the judgment of North J in **Fletcher v Nokes** [1897] 1 Ch 271 where the notice given merely stated that the tenant had `broken the covenants for repairing the inside and outside of` the house. North J was there construing the English pari materia provision of our s 18 and he said:

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> *I do not mean that the landlord need to go through every room in a house and point out every defect. But the notice ought to be so distinct as to direct the attention of the tenant to the particular thing of which the landlord complains ... The plaintiff has not condescended upon any details, and in my opinion, the notice is not sufficient ...`*

10. ***Fletcher v Nokes*** was followed and taken one step further in **Gregory v Serle** [1898] 1 Ch 652 where the notice informed the lessee that he `has not kept the said premises well and sufficiently repaired and the party and other walls thereof.` Kekewich J held this notice to be bad. However, the same notice also set out two other breaches, namely, failure to paint outside every third year and failure to paint and whiten inside every seventh year, and although these two breaches were clearly specific, Kekewich J held that the notice as a whole was still bad. He explained:

> *It may be true that the distinct breaches are sufficiently specified, but according to the judgments to which I have referred, and particularly that of North J, the tenant has not had an opportunity of considering what he has to do in order to avoid the forfeiture. I do not think it is enough for the landlord to say to the tenant `At all events you must do this.` That is not sufficient information. The tenant is entitled to look at the matter in this way: `Suppose I do spend money in painting and whitening, still I have to make good the other breach, which may be much more onerous, and involve me in much greater expense, and so, after I have painted and whitened, I may have my lease forfeited because I have not complied in some unspecified way with another covenant`. Those considerations seem to me to show that the notice cannot be saved as a whole because a part of it is good.*

11.Counsel for Limco also drew my attention to **Pannell v City of London Brewery Co** [1900] 1 Ch 496 which ought to be distinguished from ***Gregory v Serle*** . In ***Pannell*** the court held that a notice was not invalidated in toto just because some of the alleged breaches of a covenant to paint had not taken place. ***Pannell*** was not a case concerned with the question of sufficiency of particulars

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of an alleged breach. It concerned the question whether there was in fact such a breach, a matter of defence.

12. ***Pannell*** was further distinguished and clarified in **Guillemard v Silverthorne** [1908] 99 LT 584 where the notice alleged a breach which was not contained in the lease and another breach which was valid. Ridley J explained that in ***Pannell*** :

> *the notice relied inter alia on breaches of a covenant to paint, which had not in fact been committed; and there again it was held by Buckley J that the notice was not thereby necessarily rendered altogether ineffective. The notice ... was good in some respect; and it was decided that the part which was valid might be separated from the part which was invalid and that the latter might be regarded as surplusage. But here the notice does not agree with the terms of the lease, and I think that the tenant has a right to insist that the Act is not complied with unless it does.*

13.In the light of the above, it seems to me clear that for a notice to be valid it must contain sufficient particulars of the alleged breaches, and following ***Gregory v Serle*** if any alleged breach fails to satisfy the requirement as to particulars, the whole notice would be bad. So the question is, did Lee Tat give sufficient particulars of the seven alleged breaches set out in its solicitors` letter of 22 December 1989? It seems to me abundantly clear that the first alleged breach, namely:

> *in breach of cll 3(4), 3(5) and 3(6), your clients have failed to maintain the demised premises in good order and condition,*

did not contain sufficient particulars and is bad. There was no way Limco could know from that statement what precisely it was supposed to do to avoid a forfeiture. This alleged breach is very much like those in ***Fletcher v Nokes*** and ***Gregory v Serle*** , which were found to be inadequate and therefore bad.

14.Again the second alleged breach, that Limco had `used the building or part thereof otherwise than as office and factory for light industries, in particular, using the second and fourth floors as warehouse`, is also bad. While the allegation that the second and fourth floors were used as a warehouse is specific, the alleged breach went beyond that by the use of the expression `in particular`. Furthermore, what were the other non-conforming uses, and on which floors? They were not spelt out. If there were no other non-conforming uses, then instead of the words `in particular` it should have been `namely`. As formulated, the alleged breach is far from certain and is accordingly bad.

15.The fifth alleged breach is also ambiguous and bad having regard to the phrase `and have made alterations and additions without our clients` written consent`; what those alterations and additions were were not spelt out.

16.As regards the rest I would only say this. The fourth alleged breach concerned the use of `part of the premises as sleeping quarters for persons other than the watchman or security guards ...` There was no specification as to the location. The sixth alleged breach concerned subletting to SMI and MCM, without particularization as to the floor(s) on which the subletting took place.

17.In view of the defects mentioned above, particularly the alleged breaches numbered 1, 2, and 5, the notice is clearly bad. Thus Lee Tat is precluded under s 18 from enforcing its rights to forfeit on account of the alleged breaches. On this ground alone, I would dismiss the action in S 109/90. The injunction granted on 17 January 1990 is accordingly discharged. It has also become academic as Limco had given up possession of the building in January 1992. However, I am not ordering an inquiry as to damages because I do not think there was really any damages suffered by Limco on account of the issue of the injunction.

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18. ***State of building at time of lease***

However, in case I am wrong in the above determination, I shall proceed to examine the substantive merits of the alleged breaches.

19.The only witness for the plaintiff was Mr Tan Eng Khuay, Mervyn (PW1) who joined Lee Tat in 1985 as manager. Since 1992 he ceased to be the full-time manager, though he helped out on a part-time voluntary basis as Lee Tat is owned by a relative.

20.The main witness for Limco was Bernard Tan Peck Hock (DW1), who was Limco`s Director of Operations during the relevant period. He was in charge of the finance of Limco. He became a member of the board of directors of Limco on 13 January 1992 and is currently holding ten out of one million issued shares of Limco. He is now staying in Canada managing some business there. Another important witness for Limco was James Lim Ek Sun (DW6), who was a minority shareholder and the managing director from late 1989 until April 1991. Before 1989 DW6 was a director. He negotiated the tenancy agreement with Lee Tat.

21.The construction of the building must have been completed not long before 1 February 1983, the date on which the temporary occupational permit (TOP) was issued by the relevant authorities. Lee Tat alleged that Limco was the first occupier of the building. If that were true, it means that for a period of at least 5 years 10 months (until Limco was given access to the building on or about 15 December 1988, a month before the tenancy formally commenced) the building had remained unoccupied. That fact alone would have exacted its toll on the building. There is no evidence before me to indicate what maintenance was

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carried out during that period. PW1 even tried to give me the impression that the building was only completed shortly before it was leased to Limco, as the certificate of fitness (COF) for the building was only obtained in August 1988. He made no reference to the TOP. I find that PW1 must have come to know, after joining Lee Tat in 1985, that TOP for the building was obtained in 1983. He claimed he did not know of the TOP. It seems to me this is because he did not want to admit that the building was left lying around for a long time and had deteriorated.

22.According to PW1, during that interim period, Lee Tat applied for strata title to the building and some re-wiring had to be carried out as sub-meters had to be installed for each floor. But the fact is there is no evidence what maintenance works were carried out. Accordingly, I accept the evidence of DW1 that when Limco took possession of the building `it was in a dilapidated state as it had not been occupied for some time` and that Limco spent a considerable sum in sprucing up the place. That was also the evidence of DW6 - in his words it looked to him like an `abandoned building`. DW6 also noticed that the building column `sank a little bit into the ground as there (was) a gap on its side.` Even PW1 had to admit that when Limco took possession of the building there were already cracks at the apron and on the roof of the building.

23.It is also clear that before Limco agreed to rent the building, its staff did not go round the building on a detailed examination of it as if to find fault. This is admitted by Lee Tat: para 3 of Lee Tat`s further written submission and NE3. I accept the evidence of DW6 that Limco took the building notwithstanding its condition because, having regard to the size of the building, it suited the needs of Limco. As the building stood on its own, it met the security requirements of Limco. There would be no other tenants. It also had room for future expansion.

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For all these reasons, Limco was prepared to spend some money in sprucing it up.

24.It is therefore of no surprise that as early as on 9 March 1989, Limco had written to complain that the water-tank was rusty and the supply of water from the tank was not clear. In fact, there was evidence that even before this letter Limco had complained orally about the water being unsafe for drinking. This complaint is wholly consistent with the fact that the building was left to lie unoccupied and unmaintained for a long time. There would appear to be no response from Lee Tat on the complaint. Neither was any action taken by Lee Tat.

25.On 11 April 1989 Limco again brought to the attention of Lee Tat the following matters: (i) the rusty water-tank; (ii) leaking due to cracks on roof-top and window joints; (iii) 70% of the flushing systems were defective; (iv) cracks on window panes and on concrete floors. It requested Lee Tat to send a representative down to check and make good. At that time Limco had not completely moved in. It had been moving in in phases from March 1989. Moving in was completed apparently in early May 1989. Lee Tat took no action. Limco tried to remedy the defects as much as they could.

26.PW1 alleged that as Limco was late in making payments, those complaints were just excuses. Lee Tat did not allege in any letter that those complaints were excuses. The attitude of Lee Tat was quite cavalier. It could not care. It probably felt that if it just ignored them Limco would do something itself. The same may be described of PW1`s evidence in court. In the face of clear incontrovertible fact, he refused to concede that the rustiness of the water-tank was due to poor

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maintenance (I would say no maintenance) during the period before Limco took up the tenancy.

27.It was sometime in October/November 1989 that Lee Tat decided, for reasons which was not wholly clear, to evict Limco as a tenant. In October 1989 Limco was in arrears of rent for August to October 1989 due to some cash-flow problems. Limco tried to explain it in a letter and made a proposal to pay up the arrears. On 27 October 1989 Lee Tat`s solicitors issued notice to Limco to pay up the arrears by 2 November 1989. On the same day, 27 October 1989, Lee Tat`s solicitors issued another letter seeking to terminate the tenancy on the ground that Limco had `committed certain breaches of certain obligations` and asked Limco to vacate the premises on 1 December 1989. Payment of arrears of rent, together with late interest, was made by Limco on 2 November 1989.

28.In the meantime, on 1 November 1989 Lee Tat by its solicitors` letter of that date gave notice to Limco to quit on 1 December 1989 on the ground that Limco had committed `certain breaches of certain obligation ... of (the) lease, ... in particular cl 1.` (This letter was in similar terms to those in the second letter of 27 October 1989.) There were no particulars of the alleged breaches. Notwithstanding the fact that payment was made and accepted on 2 November 1989, Lee Tat`s solicitors by their letter of 7 November 1989 refused to withdraw the notice to quit of 1 November 1989 and insisted that Limco vacate the building on 1 December 1989. On 14 November 1989 Limco`s solicitors asked Lee Tat`s solicitors to particularize the alleged breaches. There was no reply until much later on 22 December 1989.

29.Then on 1 December 1989 Limco wrote again to Lee Tat about the leaking problem in view of the rainy season then. On 8 December 1989, PW1 came with

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others, equipped with camera, to inspect the premises. It would be recalled that the leaking problem was raised by Limco in April 1989 but no action was then taken. But on this occasion PW1 came. He had to explain why he came this time and not in April 1989 because Limco has alleged that this inspection was not bona fide. PW1 said that the December 1989 complaint was not a minor maintenance matter. He also said the December complaint was different from the April complaint. I am afraid I am unable to see the difference. The bona fides of the December inspection are clearly in doubt. In PW1`s affidavit of evidence-in-chief he stated that the December 1989 inspection was `a routine inspection`. That was not true.

30.Any reasonable landlord would have attended to the complaint in April, at least by inspecting the building to see if the problem was real, or the extent of the problem, and what solution could be found. Perhaps Lee Tat felt that Limco had obtained the premises at a bargain price and so did not want to spend money rectifying the defects. Yet, on the December 1989 complaint Lee Tat acted. I find that this inspection was not with a view to remedying the complaint but to finding grounds to answer Limco`s solicitors` letter of 14 November 1989 for particulars, and hopefully to forfeit the tenancy as it had already decided in November 1989 to ask Limco to leave. Thus PW1 came to the premises with his cameraman and all. I shall now proceed to consider each of the alleged breaches.

31. ***Alleged breach I***

As mentioned before, there were no particulars of this alleged breach. There was no way Limco could ascertain in what respects it was in breach. The writ was commenced on 17 January 1990. Some particulars were given in the

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affidavit of Mrs Tan Geok Tee of 2 May 1990 relating to cloggged drains. In para 8(b) of the affidavit of evidence-in-chief (AEC) of PW1 this breach was elaborated as follows:

> (i) the grass had not been cut;
>
> (ii) the trees had not been pruned;
>
> (iii) the fences not maintained allowing creepers to grow and completely cover certain portions of the fences;
>
> (iv) waste had not been removed, and creepers have grown over the waste;
>
> (v) creepers had also grown along and over the air-conditioning units; and
>
> (vi) the drains are clogged, contained stagnant water, and were potential breeding grounds for mosquitoes.

PW1 said as good landlords they did not want Limco to go; Lee Tat only wanted Limco to rectify. This does not square out with the fact that on 29 December 1989 when Limco`s solicitors denied the allegation and asked Lee Tat to specify `the specific areas of failure to maintain the premises` there was no response except for the letter of 2 January 1990 to say that as Limco had denied the allegations, it would `let the matter be resolved by the courts. `

32.Limco had employed three persons whose jobs were to keep the interior and exterior of the premises clean. If the specific complaints, which were really quite minor, had been conveyed, there should be no problem in clearing them up - basically it was just the removal of grass, creepers and some waste and the clearing of clogged drains. In any event, there is no evidence that Limco did not remove the grass, creepers and waste and clear the clogged drains within a reasonable time after 22 December 1989. There is evidence that Lee Tat`s representatives sought entry into premises on 10 January 1990. It did not give

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any advance of that intended inspection. Thus, entry was refused. But the state of the ground can be seen from the outside. Nothing was said as to the state of the grass or creepers. Inspection was eventually made on 25 January 1990. There was no notification as to the result of that inspection. I am not satisfied that Lee Tat has proven that as on 10 or 25 January 1990 Limco was still in breach.

33. ***Alleged breach II***

There is no evidence from Lee Tat that Limco stored goods of third parties in the building. In Limco`s solicitors` letter of 29 December 1989, they explained that Limco had used the building to manufacture personal computers. That was the evidence of DW1 and DW6. It was only natural that boxes containing component parts and finished products, including assessories, would be temporarily stored there. The building was not converted into a warehouse just on account of such storage. I find that such storage was incidental to the use of the building as a light industry factory.

34.In my opinion, PW1`s position was quite unreasonable when he said Limco should apply to Lee Tat for permission to store component parts and finished products. Permission to do that must be implied when a building is rented out as a light industry factory.

35.He also made wild allegations that the weight of the goods stored exceeded the load which the second and fourth floors could carry and that such use might nullify insurance cover taken by Lee Tat, in breach of cl 3(30). The insurance policy was never terminated; nor were the premiums increased on account of such incidental storage.

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36. ***Alleged breach III***

Clause 3(11) prohibited the use of the building for retail or warehouse sale. There was a show-room on the ground floor. Lee Tat alleged that Limco had used it for `demonstration cum sales` room. Again, there is no evidence of such retail or warehouse sale. Having a show-room did not mean that retail sales were carried out. Wholesale business would be different and would not be prohibited. I accept Limco`s contention that it is natural for a factory to have a showroom to display its products to visitors or prospective customers. Moreover, there is evidence to show that Limco had shop outlets at Adelphi and Sim Lim Square. It also had ten other licensed dealers besides its own marketing staff. There were also overseas dealers. To prove that Limco had used the premises for retail sales, Lee Tat must as a minimum procure a trap sale and even then if it were an isolated sale it might not be enough. This it has failed to do. There is also no evidence whatsoever that Limco had carried out any warehouse sale.

37. ***Alleged breach IV***

The complaint was that Limco used part of the premises as sleeping quarters for persons other than watchmen or security guards, contrary to cll 3(9), 3(10) and 3(13). The allegation was that labourers were staying there. Limco admitted having engaged four security guards or watchmen. Lee Tat`s allegation rest wholly on the fact that at a particular location of the building there were six beds. PW1 alleged that on 8 December 1989 when he questioned a representative of Limco as to who was sleeping there, the reply was `labourers`. Yet when Limco`s solicitors replied to state that only security guards or watchmen slept there, this point was not pursued further. No mention was made of any admission by Limco`s representative. PW1`s answer on the point that

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`by having beds and cupboards, there was a breach,` is in my view wholly inadequate. If security guards were allowed to sleep on the premises, the fact that there were cupboards and beds there should not be unexpected.

38.The point was also made that one Ong Serk Hin (Ong), who was not an employee of Limco, stayed there. The evidence here is that Ong was there at the building even before Limco moved in. Limco thought Ong was Lee Tat`s caretaker. Limco just allowed the status quo to continue. Ong continued the function of a watchman or caretaker. The fact that Limco did not pay Ong did not change the nature of the job undertaken by Ong. He performed the services of a watchman and was allowed to remain there. To allege a breach on account of this is really to clutch on straws.

39. ***Alleged breach V***

The complaint was that Limco had installed electrical fittings, glass doors in place of existing wooden doors and made alterations and additions without Lee Tat`s written consent (in breach of cl 3(15)). The defence raised is that all these works were discussed and consent was given, as was implicit in cl 3(20):

> *To pay the cost of all internal partitions constructed within the building and of installing such partitions including all doors, air-conditioners, glass and other items including in, or incidental to the same, all additional lights and power outlets, switches, and telephone equipment.*

40.PW1 admitted that if a proper application was made, Lee Tat would have no objection. Limco installed a glass door in place of the wooden door on the 7th floor. It also installed an air-conditioning system and new electrical wirings which its operations required. As I see it, even if the breach had occurred, it was really a technical breach. Lee Tat knew very well that those works had to be

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carried out in order that the object of the lease could be attained, namely, so that the premises could be used as a factory to manufacture computers and for all other incidental needs. Hacking was necessary for additional wiring and trunking of air-condition ducts to the upper floors.

41.PW1 then alleged that the hacking had affected the structural soundness of the building. I would observe that this does not form part of the alleged breach. Lee Tat took it up by complaining to PWD, who took no action in the matter. Neither did Lee Tat itself seek the assistance of structural engineers to determine whether the allegation was with or without foundation. PW1 next alleged that the value of the building has depreciated because of the hacking. This is again another of his bald assertion, without any objective evidence. PW1 further asserted that the alterations carried out by Limco affected the policy of insurance taken with The Tai Ping Insurance Co Ltd. It is true that in April 1990 Tai Ping did express some concern about the holes created by Limco for the trunking of air-condition ducts to the upper floor and asked that they be sealed. There is no evidence that Lee Tat had incurred additional premium on account of that or that the policy had been terminated for non-compliance with that request.

42. ***Alleged breach VI***

This complaint related to assigning, subletting or parting with possession of the building or part thereof to SMI Pte Ltd and MCM Singapore Pte Ltd in breach of cl 3(33). SMI had its registered office there; it also had a letter box there at the perimeter fence. In the case of MCM it had a signboard on the second floor of the building and a letter-box too at the perimeter fence.

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43.In Limco`s solicitors` reply of 29 December 1989, Limco explained that these were associate companies who were licensees. This court was told that MCM was a joint venture company with Finnish partners. MCM had no employees there. The sign was placed there just to give comfort to the Finnish partners. As and when the Finnish partners came they would have meetings at the premises. Nothing beyond that.

44.I find that there was no subletting, assigning or parting of possession of any part of the building by Limco to MCM. At the highest, MCM was only a licensee; MCM had no exclusive possession of any part of the building. It was only permitted by Limco, on occasions and on an informal basis, to use some parts of the premises. As stated by the Privy Council in **Lam Kee Ying Sdn Bhd v Lam Shes Tong** [1974] 2 MLJ 83 at p 85: `A covenant which forbids a parting with possession is not broken by a lessee who in law retains the possession even though he allows another to use and occupy the premises.` While cl 3(33) also prohibits licensing, the allegation in the notice did not concern that. Neither was licensing mentioned in the pleadings. So the case which Limco had to meet was not one based on licensing.

45.In the case of SMI, other than having its registered office there (until April 1991), a post-box being placed at the fence, and the holding of some occasional meetings, there was nothing more. SMI`s position was no different from MCM.

46. ***Alleged breach VII***

This complaint related to exhibiting on the exterior of the building two signboards without the consent of Lee Tat, in breach of cl 3(34). In its solicitors` reply Limco denied the breach but averred, in the alternative, that even if there

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were a breach, it was a technical one and requested for ex post facto permission to which request there was no reply. In January 1991 Limco took down the two signboards.

47.Limco explained that they placed the two signboards on the top portion of the wall of the building so that visitors to the premises could easily locate it as its location is quite isolated. Limco said its failure to seek permission was due to an oversight. I accept that explanation but I find there was a breach of cl 3(34).

48. ***Relief against forfeiture***

From the above it will be seen that as regards alleged breach V, there was at most a technical breach, and if this were the only breach I would have no second thoughts at all in granting relief as in substance there is nothing in that complaint. It was clearly understood between Lee Tat and Limco that renovation works would have to be carried out in order to render the building suitable for Limco`s needs; the only default of Limco was in not informing Lee Tat and seeking their formal consent.

49.However, Limco has also committed a breach of cl 3(34) when it put up the two signboards without the consent of Lee Tat. Should relief be granted for that breach? It is clear that the court`s discretion to grant relief under ss 18(3) and (4) of the Conveyancing and Law of Property Act is unfettered and very wide: **Hyman v Rose** [1912] AC 623 at p 631. But it must be exercised judicially: **Egerton v Esplanade Hotels, London Ltd** [1947] 2 All ER 88 at p 92. The court must in exercising the discretion have regard to all the circumstances of the case, including the conduct of the parties as laid down in s 18(3), and must

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have regard to the question whether the landlord would thereby be substantially prejudiced or damaged.

50.In a sense one could say that the breach of cl 3(34) is purely technical. It was not a case where putting up a signboard was absolutely prohibited. It gave the landlord a measure of control as to the kind of signboard that should be allowed to be put up and where should it be put up. While denying there was a breach, Limco nevertheless sought an ex post facto approval from Lee Tat. There was simply no reply to that request. So in January 1991 Limco took the two signboards down on its own. Having considered all the circumstances, I would grant the relief prayed for subject to only one condition, namely, that Limco remove all the brackets and nails affixed onto the wall and, as far as practical, restore the wall to its original condition, and if not to pay Lee Tat a sum of $5,000. There is no evidence before me which could assist me in arriving at that figure. But I bore in mind the fact that the works would have to be done at a very high level of the building and special care and effort, and perhaps even special equipment, might be required to undertake that restorative work. Otherwise a simple removal of a few brackets and some nails and the replacement of some tiles would not have cost more than a small fraction of that sum.

51.However, in view of my determination above that the notice issued by Lee Tat to Limco is bad, there is no question of any forfeiture arising. Thus, no question of any relief arises either.

52. ***Refund of deposit***

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I now turn to Suit No 441/92. Sometime in August 1991 Limco requested Lee Tat to extend the lease for another three years. This was refused. On 12 November 1991 Lee Tat`s solicitors wrote to Limco`s solicitors stating that Lee Tat would require Limco to restore the building to its original state. On 17 December 1991 Limco`s solicitors requested for the floor plans and the electrical wiring plans. The plans were handed to Limco on 27 December 1991. In the meantime, even before 17 December 1991, Limco had started on restoration works.

53.Lee Tat also asked Limco to obtain certificates from the relevant authorities and maintenance contractors verifying that the various facilities in the building were in good condition. Limco`s solicitors in their letter of 11 January 1992, while denying that there was any contractual obligation to furnish any certificates, nevertheless furnished some certificates and offered the necessary explanation in respect of others, as follows:

> 1 Lifts: see enclosed letter dated 8 January 1992 from Otis Elevator Company (S) Pte Ltd;
>
> 2 Water-pumps: servicing has been regularly carried out and the pumps will be returned in their original condition;
>
> 3 Water-tanks: The water tanks were handed over to our clients in seriously defective condition, and our clients are in fact handing them back to your clients in much better than original condition (see enclosed letter from our clients dated 11 April 1989 copied to your clients);
>
> 4 Fire alarm: see enclosed letter dated 7 January 1992 from Ademco (Far East) Pte Ltd;
>
> 5 Sprinkler systems: There was no sprinkler system at the date when our clients entered into possession;
>
> 6 Stand-by generator: Regular checks on the stand-by generator were carried out by our clients, even though this was not their responsibility;

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> 7 Sanitary facilities: At the date when our clients entered into possession more than 70% of these facilities were defective. They will be returned in much better than original condition.
>
> 8 Electrical and lighting facilities: Again, these will be handed over in much better than original condition;
>
> 9 Structural soundness: there is no question whatsoever of our clients having affected the structural soundness of the building. Please note that the cracking of the floors due to sinking of the building was drawn to your clients` attention prior to their entering into possession by their letter dated 11 April 1989 copied to your clients (enclosed).

54.On 13 and 14 January 1992 a joint inspection of the premises took place. The building was handed back to Lee Tat on the evening of 14 June 1992. There was no agreed list of defects. The next day, Lee Tat`s solicitors forwarded a detailed list of defects, including many items which are de mininis (exh `P1`), to Limco`s solicitors demanding that Limco carry out the reinstatement works immediately. Lee Tat refused to refund the security deposit.

55.On 17 January 1992 Limco`s solicitors returned the list with yellow and pink markings: `yellow` indicating that the rectification works had been done and `pink` indicating that those were in the same condition as Limco got then at the commencement of lease, subject to fair wear and tear. Limco offered to pay for the servicing of the dry chemical fire extinguisher as a matter of goodwill. It stated that the standby generator had been put back into working condition. It ended by stating that the premises were returned `in substantially better condition` than at the commencement of letting.

56.Suit 441/92 was commenced by Limco on 9 March 1992. In its defence Lee Tat alleged that Limco had breached various covenants of the tenancy agreement and it was thus entitled to forfeit the deposit. Many of the alleged breaches were a repeat of the alleged breaches in Suit 109/90.

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57.Under cl 5(a)(i) of the tenancy agreement it is provided that the whole of the deposit, amounting to $105,000:

> *shall be forfeited if for any reason whatsoever the lessee commits a breach of any of the terms conditions or covenants herein contained, but otherwise the deposit shall be refunded ... at the expiration ... of the term hereby created ...*

58.The first question to consider is whether this clause is a liquidated damages clause or a penalty clause. Looking at the various covenants of the lessee under the tenancy agreement it is quite clear that they are of varying degrees of seriousness, some of which could hardly have caused any real loss or damage to the landlord. On the principles enunciated by Lord Dunedin in the celebrated case **Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd** [1915] AC 79, I have no doubt in my mind that this is a penalty clause inserted in terrorem of the lessee to ensure compliance. The deposit of $105,000 was not a genuine pre-estimate of the damages which Lee Tat would suffer on account of any breach. Indeed, cl 5(a)(i) does not even state that the deposit forfeited would be the liquidated damages payable. Accordingly, Lee Tat must prove its actual loss.

59.Clause 3(4) required Limco `to maintain the demised premises in good order and condition`; cl 3(5) `to keep the demised premises including ... in good and tenantable repair and condition`; cl 3(6) `to maintain in good order and condition all sanitary water electrical and other fittings ...` In the circumstances of this case, it seems to me clear that the parties intended that the lessee`s obligation was to maintain the building in the state in which the lessee received it. This view is reinforced by cl 3(46) which provided that `at the expiration ... of the term hereby created, lessor may reinstate the demised premises to their original condition at the lessee`s cost and this cost may be deduct from the said

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deposit [sic].` Moreover, it is not Lee Tat`s case that Limco should return the building in a better condition than it was when Limco took possession of it. Lee Tat`s letter of 12 November 1991 only required Limco to restore the building to its original state. This was reiterated in Lee Tat`s solicitors` letter of 29 January 1992 (wrongly typed as 1991).

60.Under cl 3(6), fair wear and tear was excepted. In ***Hill and Redman`s Law of Landlord and Tenant*** (15th Ed) the learned authors stated (at para 140):

> *If reasonable wear and tear are excepted, the tenant is not bound to make good dilapidations caused by the friction of the air, and by exposure and ordinary use ... If the passage of time and operations of the elements has a more than deteriorating effect than usual owing to the original unsoundness of the premises, the tenant will not be liable for the resulting dilapidation ... Covenants to keep in tenantable or good or habitable repair must be reasonably construed. The landlord is not to claim for slight defects.*

61.Therefore, the question of the original state of the premises is crucial. In so far as PW1 sought to assert that when the premises were first rented out to Limco they were in good condition, that assertion is not true. I can well imagine how a building would be like if it were unoccupied and exposed to the elements for 5 years 10 months (assuming it is true that Limco was the first tenant though there is some evidence on the second floor to suggest that there could have been an earlier tenant) without maintenance. I find that PW1 has a tendency to exaggerate and to tell only half the story. On the other hand, I find that DW1`s and DW6`s evidence is probably nearer the truth. As stated before, Limco was prepared to spend some money in sprucing it up, and did so.

62.Many of the alleged breaches set out in Lee Tat`s defence and counterclaim did not give rise to any actual loss. What is relevant for consideration is the defect list (P1) drawn up by Lee Tat on which Limco made `yellow` and `pink`

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markings. Limco said that those marked `yellow` meant that rectification had been carried out. But Lee Tat claimed that those works were not properly done. Yet PW1 could not really explain how they were unsatisfactory. Those marked pink were in most instances minor defects. I find that Lee Tat did restore the building to a good tenantable condition, better than what it got marginally.

63.There is another problem which lies in the way of Lee Tat`s claim for damages. Lee Tat did not carry out the necessary rectification works with due despatch, upon Limco giving up possession of the premises. Instead, the alleged rectification works were only carried out by Lee Tat well after three years, after Limco had given up possession of the premises. Why the delay? PW1 tried to explain that the main director of Lee Tat was then very sick and he passed away in May 1993. So attention was not paid to this matter. But why until 1995? Be that as it may, Lee Tat allowed this building to fall into disrepair and be exposed to the elements for three long years. It is of interest to note that in Lee Tat`s defence and counterclaim filed on 1 April 1992 Lee Tat stated that remedial work was in progress. In the light of what is now known that could not be true.

64.Lee Tat tendered to court some 11 invoices of Sin Hoe Hin Contractor (PB223-233) and one invoice of Active Hydro Control (S) Pte Ltd (Active Hydro) to prove the costs incurred in rectification works. The invoice of Active Hydro was for supplies for roofing works. There are two crucial points to note in this regard. Firstly, PW1 never supervised the works allegedly carried out by Sin Hoe Hin Contractor or inspected the supplies provided by Active Hydro. Second, neither Sin Hoe Hin Contractor nor Active Hydro was called to prove those invoices and be cross-examined as to the nature of works done or supplies provided by either of them. Limco gave formal notice of objection that it wanted

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the invoices proved. As no such proof was produced, the invoices are therefore inadmissible in evidence. Thus, Lee Tat has not proven its loss.

65.Furthermore, in this regard, there are three other factors which I have already mentioned and which ought to be borne in mind: (i) the poor state of the premises when Limco took over; (ii) the fact that Limco did undertake works to restore the building to its original state; and (iii) the more than three years of neglect after Limco vacated the premises on 14 January 1992. A fourth factor is that the works covered by the 11 invoices are not quite the same as those defects set out in the defect list (P1); some are in one and not the other, thereby suggesting that some defects could have arisen after Limco had left the premises. So even taking P1 to be an accurate description of the defects found as on 14 January 1992, there is no way I could come to any view as to the losses suffered by Lee Tat which are attributable to the breaches on the part of Limco. It is not possible for me to make any apportionment of the invoices tendered, assuming they are admissible in evidence.

66.Looking at the matter objectively, I cannot help but feel that Lee Tat is trying to heap all the losses, on account of years of neglect on its part, onto Limco. When Limco took possession of the building, the roof, the water-tank and many of the flushing systems were already defective. There were also cracks at other places, particularly the apron. Lee Tat did not maintain the premises before Limco took possession of it; neither did it do so after Limco gave up possession on expiry of the tenancy.

66. ***Judgment***

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In the result, I hold that Lee Tat has not proven the damage caused by Limco, or the actual loss on account of rectification works carried out by Lee Tat which are attributable to Limco`s breaches of the tenancy agreement. Accordingly, I order that Lee Tat shall refund the entire deposit of $105,000 to Limco. The counterclaim of Lee Tat is dismissed.

67.Limco shall have the costs of both actions, including the counterclaim in Suit 441/92.

68. ***Addendum***

On the question of pre-judgment interest, I have to bear in mind the fact that Limco took no further steps for a considerable period of time after pleadings were closed so much so that Lee Tat applied to have the action struck out for want of prosecution. Accordingly, I would only allow interest at 6% on the judgment sum of $105,000 from 31 July 1996, the date on which Limco filed the summons for directions.

Chao Hick Tin J

CS Lee (CS Lee) for the plaintiff in S 109/90 and defendant in S 441/92
Lisa Chong (Lisa Chong & Partners) for the defendant in S 109/90 and plaintiff in S 441/92.

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