IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 372

Suit 1820/1996

Between

Workspace Consultants Pte Ltd

… Plaintiff

And

Teo Seng Siew
Malpore Properties & Services Pte Ltd

… Defendant

And

Kol Shiang Pro-Builders Pte Ltd

… Third Party

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Workspace Consultants Pte Ltd v Teo Seng Siew and Another (Kol Shiang Pro-Builders Pte Ltd, Third Party)

[1998] SGHC 372

Suit 1820/1996
Judith Prakash J
16 November 1998

1 **Judgment :**

2 **Cur Adv Vult**

3 Background

4 1. The premises known as 206A Tanjong Katong Road are a second storey apartment located above a shophouse. At all material times, the only permitted use of these premises has been as a residence.

5 2. Since 1960, the first defendant, Mr Teo Seng Siew, has been the tenant of the premises. He used them first as his home and subsequently, as a factory for his shoe-making business. At one stage, he applied for a change in the use of the premises.

6 Although his application was turned down, Mr Teo continued to use the premises as his factory until sometime in March 1992 when he sub-let them to

a company called KOL Shiang Pro-Builders Pte Ltd ('KOL'). KOL used the premises as an office.

7 3. In October 1995, one Mr Jacky Lee of KOL informed Mr Teo that his company wanted to move out of the premises although their tenancy was not due to expire until March 1996. Jacky Lee informed Mr Teo that KOL would find a new tenant to take over the tenancy of the premises as it did not want to lose its rental deposit. Mr Teo made no objection to KOL's proposal since it would save him the trouble of having to look for a replacement tenant himself. He did not, however, enquire from Jacky Lee how the latter was intending to go about locating a substitute tenant.

8 4. The second defendant, a company carrying on the business of real estate agents, was known to Jacky Lee as one of its employees, William Hong Khee Hock, had dealt with him in connection with his purchase of a bungalow. Jacky Lee therefore called William Hong and told him 'My office is for rent. Get someone to lease it'. William Hong was not told that KOL was a sub-tenant of the premises and he assumed that KOL would be the landlord. However, as William Hong was employed by the second defendant as a residential sales agent, he passed KOL's business over to his colleague, Ms Evelyn Lim Bee Hong.

9 5. In October 1995, Evelyn Lim was a novice real estate agent. She had received three months training from one of the directors of the second defendant in both sales and rentals with most of her training focussing on the sale of HDB flats. She did not receive much training regarding leasing and no training at all with respect to the completion of a commercial tenancy transaction. The lease of the premises was her first commercial tenancy transaction.

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10 6. Evelyn Lim proceeded to draft and place an advertisement regarding the availability of the premises for rental. This advertisement appeared in the 'Classified Advertisements' section of the Straits Times on 14 October 1995. It was one of the advertisements appearing under sub-section 534 entitled 'Office Space for Rent' and read:

> '**D.15 TG. KATONG RD. 900 sq.** ft. Fully carpeted. Asking $2000 Move in cond. 92121862 Malpore'

11 Evelyn Lim did not do any background check on the premises before advertising them as office space available for rental. She simply accepted the description of the premises as office which KOL had given to the second defendant.

12 7. In October 1995, the plaintiff company was looking for bigger and better office premises. It had been incorporated in November 1993 to carry on business as an interior designer of offices and also to supply furniture to commercial organisations. The managing director of the company was one Roger Lau Chee Keong. On 14 October itself, he spotted the advertisement which Evelyn Lim had placed and subsequently made contact with her.

13 8. On 17 October, Roger Lau went to the premises with Evelyn Lim in order to view them. Evelyn Lim gave him her name card and he noted that she was described on it as a 'real estate specialist'. During their tour, Roger Lau noticed that the premises had already been used as an office and they were actually located on a second storey on a row of commercial shophouses. He asked Evelyn Lim several questions about the premises. She told him that the present occupier was KOL and that KOL would have no objection to the plaintiffs renovating the premises provided the internal structure remained intact. Roger Lau asserted in evidence that he also asked Evelyn Lim whether

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the premises could be used as an office and her reply was in the affirmative. According to him, her exact words were '… if KOL could use the premises for the past 10 years as office space then [the plaintiffs] should have no doubts about it'. Evelyn Lim herself denied making that statement.

14 9. The plaintiffs were keen to rent the premises. After some negotiations, on 1 November 1995, Evelyn Lim on behalf of the second defendant sent the plaintiffs a letter of intent for them to sign. This letter was addressed to KOL and started off by saying 'We are pleased to inform you that our client, Workspace Consultants Pte Ltd has confirmed their intention to lease the above mentioned property on the following terms and conditions …'. The letter was signed by Evelyn Lim and contained two confirmation portions to be signed by the prospective tenant and landlord respectively. Roger Lau duly signed the letter of intent on behalf of the plaintiffs and pursuant to it, he issued a cheque for $1,700 in favour of KOL as a holding deposit.

15 10. The next part of the story is somewhat murky with different versions being put forward by Mr Teo and the second defendant. What can be extracted from their varying accounts is that at some stage Jacky Lee informed William Hong that the actual landlord to be named in the proposed lease with the plaintiffs was Mr Teo and not KOL. He then arranged for a meeting between William Hong, Evelyn Lim and Mr Teo. Thereafter, a tenancy agreement was produced and presented to Roger Lau for signature on behalf of the plaintiffs. Mr Teo maintains that this tenancy agreement was prepared by the second defendant whereas the latter's version is that when Mr Teo was presented with their standard form of commercial lease, he rejected it and instead put forward his own format for signature.

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16 11. In the evening of 28 November 1995, Evelyn Lim took the form of the tenancy agreement to the plaintiffs' office for execution. Roger Lau duly signed it. The next day the agreement was dated 29 November 1995 and stamped. It was described as being made between Mr Teo as the tenant and the plaintiffs as sub-tenant. Roger Lau's testimony was that he first learnt of Mr Teo's involvement a day or so before execution when a copy of the proposed agreement was faxed to him by the second defendant. Roger Lau assumed that KOL had granted a lease of the premises to Mr Teo and that the latter was in turn sub-leasing the premises to the plaintiffs. The agreement contained the following material terms:

> (1) the premises were let to the plaintiffs for a period of two years commencing on 1 December 1995 at a monthly rental of $1,700, made up of $1,000 for the premises themselves and $700 for the furniture in them;
>
> (2) the plaintiffs had to pay two months rent as deposit which deposit was to be refunded to the plaintiffs at the termination of the tenancy;
>
> (3) the plaintiffs were to use the premises as an office space in the carrying out of administrative, clerical or similar activities pursuant to the plaintiffs' business;
>
> (4) there was a specific covenant that the plaintiffs would not use or permit the premises to be used as living quarters for themselves their servants or agents.

17 12. The plaintiffs duly moved into the premises and carried out their business from there. On 20 January 1996, the plaintiffs had a rude shock. They received a letter from the Urban Redevelopment Authority ('the URA') stating that the URA had conducted a recent site inspection of the premises which revealed that they were being used as an office. The letter went on to state that the premises were located in a residential zone and approved for use as a dwelling house. The use of the premises as an office could not be supported as it was a non-conforming user. The plaintiffs were advised to cease the

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unauthorised use of the premises within 30 days from the date of the letter and were notified that if they did not comply with this directive the URA might have no alternative but to take legal action against them to restore the premises to residential use.

18 13. Thereafter the plaintiffs negotiated with the URA through their solicitors. On 4 March 1996, the URA informed the plaintiffs' solicitors that it was willing to withhold action against the plaintiffs for a period of six months thereafter. The plaintiffs were to ensure, however, that the use of the premises as an office was not intensified during the grace period. The plaintiffs then looked for an alternative office and on 5 June 1996, they were able to inform Mr Teo, through his solicitors, that they would be vacating the premises on 1 July 1996. This they duly did.

19

20 The proceedings

21 14. This action was commenced on 25 September 1996. The plaintiffs wanted compensation for the damages they had sustained by reason of the forced early termination of their lease of the premises and they claimed that both Mr Teo and the second defendant were liable to them for such damages. By their statement of claim the plaintiffs alleged that the second defendant had been acting as agent for Mr Teo in the transaction and that on Mr Teo's instructions the tenancy agreement had been prepared and presented for signing by the second defendant to the plaintiffs and Mr Teo himself.

22 15. The action against Mr Teo was founded on breach of contract, alternatively, in tort. The plaintiffs pleaded that it was an implied term of the

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tenancy agreement that Mr Teo would have obtained planning permission for the premises to be used as an office so as to enable the plaintiffs to sub-lease the premises and use them as an office. In breach of this implied term, Mr Teo had leased the premises to the plaintiffs knowing full well that they were located in a residential zone and that no planning permission had been obtained for their use as an office. Alternatively, the plaintiffs pleaded that Mr Teo had expressly and/or impliedly represented and warranted to the plaintiffs that the premises were capable of being used as an office space and could not under any circumstances be utilised as a place of residence. These representations and warranty were to be inferred from the advertisement placed in the Straits Times by the second defendant on 14 October 1995, certain clauses of the tenancy agreement itself, and oral statements made by Evelyn Lim to the plaintiffs.

23 16. In connection with their claim against the second defendant, the plaintiffs relied on negligent misstatement and/or representation. They pleaded that the second defendant had represented that the premises could be utilised as an office and at the time of making the said representation the second defendant intended and well knew that the plaintiffs would rely on the representations and would be induced thereby to enter into the tenancy agreement and lease the premises for use as an office. The second defendant was under a duty to take care in the making of the representations to the plaintiffs but had failed to make the necessary enquiries regarding the fitness of the premises for use as an office and had therefore made the statements about the premises negligently. The plaintiffs relied on the advertisement and Evelyn Lim's answers to Roger Lau's questions as constituting the actionable negligent misstatement.

24 17. Both defendants contested the plaintiffs' claim. Mr Teo filed a long defence denying liability on various grounds which I need not go into. The

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second defendant denied having acted as an agent for Mr Teo. It alleged that the tenancy agreement had not been prepared by it and if at all any representations had been made by it, such representations had been innocent mis-representations. The second defendant also denied having been negligent.

25 18. In November 1996, the second defendant issued a notice against Mr Teo claiming a contribution from him in the event that they were held liable to the plaintiffs. The basis of their claim to be indemnified by Mr Teo was that at all material times they were acting as Mr Teo's agents and on his instructions that the premises were fit for use as an office. At the same time, the second defendant filed a third party notice against KOL claiming an indemnity from the latter in the event that they were found liable to the plaintiffs on the basis that at all material times the second defendant had been acting on KOL's instructions as its agents and on its representation that the premises were fit for use as an office. KOL did not enter an appearance to the third party action. When the trial started in May this year, it was not represented and did not appear.

26 19. When the trial started, both defendants were vigorously defending the plaintiffs' claim both as to liability and as to quantum. On the third day of the trial, however, after having been cross-examined by counsel for the plaintiffs for some time, Mr Teo through his counsel admitted liability in principle and indicated that from then on his defence would be restricted to the quantum of the plaintiffs' claim. The second defendant, however, maintained its total denial of liability until the end of the trial.

27 Liability of the second defendant

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28 20. There was no contractual relationship between the plaintiffs and the second defendant. As such, any liability of the second defendant to the plaintiffs can only arise in tort, to be specific, the tort of negligent misstatement. Liability for negligent misstatement was first established by the decision of the House of Lords in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1963] 2 All ER 576. The principle to be extracted from the judgments delivered in the case, as stated by the editors of the All England Reports, is that if in the ordinary course of business a person seeks information or advice from another, who is not under a contractual or fiduciary obligation to give the information or advice, in circumstances in which a reasonable man so asked would know that he was being trusted, or that his skill or judgment was being relied on, then the person replying accepts a legal duty to exercise such care as the circumstances require in making his reply and if he fails to exercise that care and damage results, an action for negligence can be brought against him.

29 21. The plaintiffs' position is that all the requirements necessary to satisfy the test in *Hedley Byrne* are present in this case. First, the statements giving rise to liability were made in the course of the second defendant's business as a real estate agent and for the purpose of carrying out that business. Secondly, there was no contractual or fiduciary obligation on the second defendant to provide the information requested. Thirdly, when the second defendant was asked whether the premises were fit for use as an office, any reasonable person in the second defendant's position ie that of an agent acting for a prospective landlord and dealing with a prospective tenant, would have known that as the purported representative of the landlord and someone who would be expected to know the salient details of the property for rent, such information as he passed on would be trusted and/or relied upon by the prospective tenant. Fourthly, the misstatements made by Evelyn Lim both in the

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advertisement and in her replies to Roger Lau's questions resulted from a failure on the part of the second defendant to exercise due care in making statements about the premises. This was because, as the evidence showed, William Hong had simply assumed from what Jacky Lee told him that the premises were fit to be use as an office. He had not asked Jacky Lee for confirmation of that fact nor had he or anyone in the second defendant's office made any enquiries as to the actual status of the premises prior to placing the advertisement in the Straits Times or prior to taking Roger Lau around the premises. Evelyn Lim herself had not carried out any independent investigations as to the status of the premises and had been content to rely on what she understood KOL to have told William Hong.

30 22. The second defendant did not, in its closing submissions, deny that the circumstances were such as to impose upon it a duty of care in relation to statements regarding the premises made to the plaintiffs as prospective tenants. Their contentions were that they did not make the alleged representations and, secondly, that the plaintiffs were not induced by the representations to enter the tenancy agreement. The second defendant could not, of course, deny having placed the advertisement for the premises in the column 'Office Space for Rent' but they said that this was simply an invitation to treat and was not an offer containing a representation.

31 23. The oral representations which the plaintiffs rely upon are those which were allegedly made by Evelyn Lim to Roger Lau during his visit to the premises on 17 October 1995. According to Roger Lau, Evelyn Lim told him that the previous occupant of the premises was KOL who had occupied the premises as an office for the previous ten years and that if KOL could utilise the premises for that period as office space then the plaintiffs should have no doubt

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about it. These representations were made in response to the specific question whether the premises could be used as an office.

32 24. In the affidavit which she filed as her evidence-in-chief, Evelyn Lim gave a bare denial of having made any representations to the plaintiffs without providing a description of her version of the events that took place on 17 October 1995. This bare denial was something that had appeared in the defence of the second defendant itself and also in William Hong's affidavit. No one, on behalf of the second defendant, condescended to inform the court what exactly had taken place during the relevant visit to the premises.

33 25. Evelyn Lim's credibility and that of William Hong are suspect. In para 9 of her affidavit, she asserted that it was Mr Teo who had made the representation directly to the plaintiffs that the premises were fit for use as an office when the plaintiffs and Mr Teo were negotiating the terms of the tenancy agreement between themselves. She also stated in para 7 of her affidavit that apart from the negotiation of the rental for the premises which took place between herself and Roger Lau, the terms of the tenancy agreement were negotiated by Roger Lau and Mr Teo directly. When she came to court, counsel for the second defendant asked her whether para 7 was correct and at first she affirmed that it was. She was then asked to read it carefully and in response she corrected herself and stated that para 7 was not correct and the terms of the tenancy agreement had not been negotiated directly between the plaintiffs and Mr Teo. Under cross-examination she was asked why she had made the mistake in her affidavit and her explanation was that she had not understood the statement in para 7 that read 'The terms of the tenancy agreement made between the Plaintiffs and the 1st Defendant ("the Agreement") were negotiated directly between Roger and the 1st Defendants'. She also stated that she had not

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understood para 9 and that to her this paragraph was a bit confused. The natural inference from her statements in court was that the contents of para 9 were also incorrect.

34 26. Evelyn Lim's explanations for the mistakes which she made in her affidavit were not convincing. It appeared to me that she had signed the original affidavit on the basis that that was the stand that the second defendant was taking at the time it was prepared and it was only when the second defendant realised that that stand could not be sustained that she came to court to correct the misstatements in the affidavit. Further doubts are cast on her credibility by the inconsistent stories told in relation to the preparation of the tenancy agreement. She and William Hong maintained that the tenancy agreement had been prepared by Mr Teo after he had rejected the second defendant's standard form but their evidence on how this document had been collected from Mr Teo was in direct conflict, Evelyn Lim asserting that she had collected the final version from Mr Teo, while William Hong said he had done so. All in all, I have grave doubts on the veracity of Evelyn Lim's evidence where it conflicts with Roger Lau's testimony.

35 27. It should also be noted that during cross-examination Evelyn Lim did admit that she had told Roger Lau that KOL had been using the premises for a few years and that there was a split air-conditioning unit in the premises and furniture and that they did not need much renovation. It is probable that this reply was given in answer to questions which Roger Lau had asked as it was not necessary for her to volunteer such information unless the use of the premises was being called into question. Information to the effect that the previous tenant had been using commercial premises for a few years would not in itself be relevant unless it was important that the tenant had been using the premises as

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an office during those years thus leading potential tenants to believe that there was no difficulty in the continued use of the premises as an office.

36 28. Roger Lau was asked under cross-examination by counsel for Mr Teo as to why, despite having noted that the premises were outfitted for use as an office, he had still asked Evelyn Lim whether they could indeed be used as an office. The witness's response was that before going down to see the premises he had spoken with his solicitor, one Mrs Samuel, who had advised him to check with the agent whether the premises could be used as an office and to get a confirmation of this before negotiating. This was a credible answer. Counsel for the second defendant did not question Roger Lau on the events that transpired on 17 October 1995 nor was it put to him that Evelyn Lim had not made any representations. In the result, I find that Roger Lau's credibility was not impeached in any way and that his account of what happened during the first visit to the premises was an accurate account.

37 29. The other point made by the second defendant was that the plaintiffs did not rely on the representations. It should be noted that this submission was made on the basis that the advertisement could be construed as a representation. It was not a rebuttal to the plaintiffs' assertion of the making of the oral representations because the second defendant did not admit the possibility that those representations had actually been made. The submission of non-reliance was founded on Roger Lau's testimony that when he viewed the unit it looked like an office to him and that he had made up his mind to take the premises on his first visit. He also stated that from the moment he stepped into the premises and until he left them he did not have any doubts as to whether they could be used as an office.

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38 30. The plaintiffs submitted that any ordinary member of the public wanting to rent an office would be influenced by the fact that premises were advertised as 'Office Space for Rent' which would indicate that those premises could indeed be safely used as an office. They pointed out that the plaintiffs were so influenced in the present case because in addition to the evidence which the second defendant relied on, Roger Lau had stated quite expressly that the advertisement had influenced him. It was put to him that his decision to take up the tenancy was made after seeing the premises rather than after seeing the advertisement and his response was that there was more to the decision than just viewing the place. He admitted that the advertisement had brought the premises to his attention and that his decision to take the tenancy came after he had viewed them and had negotiated the terms but asserted that the advertisement had played a part in his decision to take up the tenancy.

39 31. In my judgment, the plaintiffs were influenced by both the advertisement and the oral representations. Whilst the advertisement may, technically, have been only an invitation to treat, that did not prevent it from containing material information on which prospective tenants would rely. Bearing in mind the plaintiffs' intentions at the material time, it is indisputable that Roger Lau only contacted Evelyn Lim for a viewing because of the contents of the advertisement. The advertisement had drawn the premises to the plaintiffs' attention as possible office space for occupation and the oral representations made by Evelyn Lim had cleared up any lingering doubt that might have remained as to the permitted use of the premises. Evelyn Lim was obviously aware that the plaintiffs wanted to use the premises as an office since during the first visit she took pains to point out that it did not need much renovation. It is common ground that the premises were then outfitted as an office and Evelyn Lim's statement was thus a clear recognition of the intended

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use. Also having advertised the premises as office space, she expected only persons interested in such space to respond to it. The second defendant could have ameliorated the effect of the advertisement by telling Roger Lau that whilst the previous occupant had used the premises as an office, he would have to make his own enquiries to confirm that this use could be continued. It did not. Instead the effect of the advertisement was enhanced and any possibility that the plaintiffs would investigate this situation further was thereby negated. Roger Lau went away from the first visit convinced that the premises could be used as the plaintiffs desired.

40 32. The second defendant did make a submission in closing that even if it was found that Evelyn Lim had said what Roger Lau alleged, these statements were innocent representations on her part and that the plaintiffs would only be entitled to rescission of the tenancy agreement and not to damages against the second defendant. This submission does not provide a defence to the tort of negligent misstatement and the fact that the plaintiffs might be entitled vis--vis Mr Teo to rescind the tenancy agreement does not disentitle them from claiming damages from the second defendant in respect of the second defendant's own tortious conduct.

41 33. I am satisfied that the plaintiffs have established their claim against the second defendant for negligent misstatement.

42 Liability of Mr Teo to indemnify the second defendant

43 34. The second defendant claims to be entitled to an indemnity from Mr Teo in respect of any liability which it is found to have to the plaintiffs. The submissions in this connection were that the evidence indicated that Mr Teo

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knew that William Hong had been approached by KOL to look for a tenant for the premises and did not stop William Hong from doing this. By this conduct, Mr Teo had allowed the second defendant to represent him as he was the landlord of the premises and the tenancy agreement that was executed was prepared by or for Mr Teo.

44 35. I cannot accept the above submissions. There was no evidence adduced by the second defendant which established that Mr Teo knew of its appointment before it was made and concurred in it. Neither was there any evidence that he had given any instructions to the second defendant in relation to the premises whether in respect of the rental he expected, the terms of the tenancy, its fitness for use as an office or otherwise. The evidence of William Hong was that at all times he dealt with Jacky Lee. Further, given that the second defendant prepared a letter of intent addressed to KOL and obtained a cheque for the initial deposit drawn in KOL's favour, it is clear that the second defendant did not know anything about Mr Teo's involvement in the transaction until after 1 November 1995 when the plaintiffs had confirmed their intention to take up the tenancy. It must have been only then that Jacky Lee informed William Hong that the actual landlord was Mr Teo, thus leading to the meeting between the parties at the coffeeshop. Mr Teo was firm in his evidence that he had not appointed the second defendant as his agent and had simply dealt with them on a fait accompli basis.

45 36. By the time Mr Teo met the second defendant's representatives the negligent misstatements had already been made to the plaintiffs and Mr Teo cannot be held responsible for anything that was done before that date. On the evidence adduced before me, there is no doubt that at all material times the second defendant was acting as the agent of KOL and that there was no

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contractual relationship between them and Mr Teo. The mere fact that Mr Teo was subsequently informed of the second defendant's role and, while not wanting to be responsible for its commission, did accept the tenant found by the second defendant, cannot make him liable to indemnify it against the plaintiffs' claim. He had done nothing which could impose such a liability on him.

46 Quantum of damages

47 37. The first issue here is on what basis the damages payable by Mr Teo to the plaintiffs should be assessed. The plaintiffs' claim against him was framed in the alternative as follows:

> (a) breach of an implied term that he would have obtained planning permission for the premises to be used as an office thereby enabling the plaintiffs to sub-lease the premises and use them as an office;
>
> (b) express/implied fraudulent misrepresentations on the part of Mr Teo;
>
> (c) negligent misrepresentation.

48 38. When Mr Teo admitted liability for the plaintiffs' claim he did not specifically indicate which head of claim he was accepting liability under. The plaintiffs therefore submitted that the court was not restricted as to which head it would award the plaintiffs damages under. The liability of Mr Teo would extend under all the heads. The further submission was that the plaintiffs should be awarded damages for fraudulent misrepresentation which would be the most generous measure.

49 39. In my judgment, the admission of liability which Mr Teo made has to be construed as an admission of liability for breach of an implied term of the contract. As noted in para 11 above, the tenancy agreement contained a clause

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which obliged the plaintiffs to use the premises as an office space in the carrying out of administrative, clerical or similar activities pursuant to the plaintiffs' business. Such an obligation would only make commercial sense if such use was a permitted use of the premises. Accordingly, it had to be an implied term of the agreement that such was the case. Having found that contractual liability exists, I do not think that tortious liability would be relevant bearing in mind Lord Scarman's observations in *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] A.C. 80 where the learned judge observed on behalf of the Privy Council that:

> 'Their Lordships do not believe that there is anything to the advantage of the law's development in searching for a liability in tort where the parties are in a contractual relationship. This is particularly so in a commercial relationship.'

50 In any case, my view is that the plaintiffs have failed to make out their claims against Mr Teo for misrepresentation since, as I have found, the second defendant did not act as his agent at any material time and any representations that it made did not have either his express or his implied authority. Mr Teo himself made no representations to the plaintiffs and did not even meet them prior to the signing of the tenancy agreement. His liability therefore arises squarely from the terms of that agreement whether express or implied and not from any representation.

51 40. Accordingly, the damages which Mr Teo is liable to pay must be assessed on the contractual basis. The general principles relating to the contractual test of damages formulated in *Hadley v Baxendale* [1854] 9 Exch. 341 are well known. The contract breaker is liable for the loss sustained by the innocent party which either arises naturally from the breach of contract itself or

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was of such a nature as may reasonably have been supposed to be in the contemplation of both parties at the time that they made the contract.

52 41. The plaintiffs claimed to have sustained damages under two broad heads as a result of having to vacate the premises prematurely. The first head related to the expenses incurred in their move to new premises. This included the increase in rental which they had to bear in relation to the replacement premises and the various labour and other costs incurred in moving. Schedule A to the statement of claim contains the full particulars of the sums claimed under this head. They total $50,860.80.

53 42. Most of the items in Schedule A are clearly recoverable. There are, however, three items that require consideration. First, there is the plaintiffs' claim for the increase in the cost of rental. The premises were let out at a rent of $1,700 per month for a period of two years. The substitute premises which the plaintiffs located cost them $2,400 a month over a tenancy period of three years. The plaintiffs calculated the damages sustained by the increase in rental by multiplying $1,700 by 29 months (ie 36 months less the seven months which they spent in the premises) and deriving a total of $49,300. They then calculated the new rental for the same period of 29 months and came up with $69,600. The difference between the two figures is $20,300 and this formed the plaintiffs' claim for this item. I do not think that that method of calculation was correct. The original tenancy agreement was only for two years and although it provided that it could be extended for a further year thereafter, the rent to be paid for that extra year was not fixed but was subject to mutual agreement between the plaintiffs and Mr Teo. This meant that there was no binding agreement for the extension but only an agreement to agree. Further, the plaintiffs were not assured that even if the tenancy was to be extended the rental for the extended

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period would remain at $1,700 per month. It could have been higher than that figure and could even, depending on market conditions at the time, have been higher than $2,400 per month. In my judgment, the plaintiffs were only entitled to calculate the increased cost of rental on the basis of what they would have paid during the remaining original term of the tenancy agreement ie a period of 17 months. This means that the extra rental occasioned by the breach would be $11,900 (ie at $700 per month) rather than $20,300.

54 43. The next item is a claim for loss of office area. The area of the premises is 900 square feet. The replacement premises which the plaintiffs moved to has an area of only 721 square feet, a difference of 179 square feet. The plaintiffs calculated the cost to them of the extra space on the basis of rent that they would have paid for it had they remained in the premises for the full term and claimed that sum. I calculate that sum as working out to $5,747.89 but the plaintiffs' claim was for $10,298.20 because they used a period of 29 months and, due to an arithmetical mistake, a difference in area of 188 square feet instead of 179. The objection put forward to this item is that the plaintiffs did not prove that they had looked for alternative office space of an area equivalent to that of the premises. Roger Lau's testimony, however, was that he spent about six weeks in May and June 1996 looking for new premises and this evidence was not really challenged. In the circumstances, I consider this item which is really an additional rent claim, to be claimable in the amount of $5,747.89.

55 44. The final claim under the special damages section is for parking costs. Roger Lau's evidence was that the plaintiffs enjoyed free parking at the premises but not at their new premises. The plaintiffs had therefore had to reimburse him for parking fees amounting to $8,820 over the remaining period of the tenancy. These parking costs were calculated at $10 a day over a period

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of 29 months. The plaintiffs produced no proof that they actually incurred parking costs in that amount every day of the 29 month period. The claim is inflated on two counts. First, the period itself is too long. Secondly, the number of days is exaggerated in that the plaintiffs would not have worked every day of the year. Further, Roger Lau's evidence was that he spent a large part of each day out of the office canvassing for business. How much he would have incurred as parking fees when his car was actually parked outside the office rather than outside the offices of clients and potential clients was not established. I therefore do not allow this claim.

56 45. As a consequence of the adjustments required for the reasons above, the plaintiffs have proved special damages amounting to $28,894.49 and they are entitled to this amount.

57 46. The next head of claim, which has been hotly contested by both defendants is a claim for loss of profits. As Roger Lau explained it in his affidavit, the head of claim arose as he was the sole marketing representative of the plaintiffs. He sourced for work, contacted suppliers and also assisted in designing. The plaintiffs were performing well enough up to July 1996 when they had to leave the premises. He had to spend the better part of late May and June attending to the obtaining of new premises. He had to spend most of July and August 1996 setting up the new premises and informing clients of the plaintiffs' change of office. As a natural consequence of the aforesaid, the plaintiffs' takings for April to June 1996 totalled $236,943.44 whereas they secured a mere $4,631.14 for the months of July and August 1996. The plaintiffs accordingly claimed damages to be assessed for loss of business.

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58 47. Both defendants have submitted that this head of damage is too remote and should not be awarded. They pointed out that Roger Lau's testimony showed that the plaintiffs had little repeat custom for their design work and they had to make quite an effort to get new clients which they did by writing letters to potential clients, through sending mailers and by doing 'cold calling'. This was Roger Lau's responsibility. His modus operandi was to drive around Singapore looking for new buildings which could house potential clients. When he found such a building he would go to the information board to ascertain who owned it and would then visit the owner. He also asserted that the time that he had to spend looking for new premises for the plaintiffs meant that he had less time to go out and source for new clients. The crux of the plaintiffs' case concerning their claim for loss of business therefore really boiled down to the time they had wasted in procuring a fresh tenancy which in turn affected their marketing efforts and resulted, they contended, in them sustaining a fall in turnover from an average of $78,981.85 per month before the move to $2,315.57 per month after the move.

59 48. Counsel for Mr Teo admitted that one of the natural consequences of his breach was that the plaintiffs had to re-locate their business. This consequence would also have been within the contemplation of the parties. That was why Mr Teo had not disputed most of the moving costs incurred by the plaintiffs. It was submitted, however, that it was never within the contemplation of the parties at the time of the contract that the plaintiffs would suffer any loss of business as a result of the re-location. It was said the plaintiffs offered no evidence to show otherwise and, on the contrary, the evidence which they gave showed that the methods they employed in procuring business were independent of the location of their office. The plaintiffs were not running a business that was dependent on walk-in trade.

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60 49. It was further submitted that any loss of business did not arise naturally as a result of the re-location. To attribute the cause of the plaintiffs' loss of business solely to the process of relocation was far-fetched. It was argued that a company cannot justify any loss of business as being attributable to the effort involved in the shifting process and that indeed the process of shifting and re-location must be taken to be part and parcel of a company's conduct of business.

61 50. Other facts too did not support the contention that the plaintiffs' fall in business after the relocation arose solely from the move. The plaintiffs discovered the breach on 20 January 1996 but did not move out of the premises immediately. Instead they negotiated with the URA and obtained permission to remain on the premises until the beginning of September 1996. They were, therefore, granted a reasonable period of time in which to look for new premises and in fact they were able to find such premises by June 1996 thus resulting in them vacating the premises on 30 June. Whilst Roger Lau did testify that it took the plaintiffs almost one and a half to two months to visit many different shophouses and to negotiate with the new landlords, he did not give further details of these visits and negotiations. So it is difficult to assess the actual amount of time involved in the search. Judging from the speedy manner in which the plaintiffs were able to conclude the deal for the premises in question, it seems unlikely that looking for new premises and negotiating the contract could really have taken such a long time. Also, there was no reason why Roger Lau could not schedule his marketing efforts so as to minimise the effect on them of his office hunting. His hours were flexible since most of the persons he visited to solicit business from were not expecting him. Further, the office hunting could have been done in the evening and need not necessarily have interfered with the plaintiffs' marketing. There could have been all sorts of

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reasons for the fall in the plaintiffs' business in July and August 1996 and it takes a stretch of logic to attribute the fall solely to plaintiffs having to find a new office.

62 51. A direct loss in profits or business would not, in this case, be something that arose naturally from the breach of contract since the premises were occupied as an office and not as a factory or a shop or restaurant. For the same reason they cannot have been supposed to be in the contemplation of both parties when the tenancy was made. Nor was there any special knowledge which would justify the imposition of liability. Mr Teo had no knowledge at all of the way that the plaintiffs carried on business and no reason to believe that any abrupt termination of the lease would have such a substantial effect on their income.

63 52. As far as the second defendant is concerned, its liability is to be adjudged on the tortious basis of whether the damage was of a kind which a reasonable man should have foreseen. On this basis, the second defendant is liable for the special damages I have found the plaintiffs to have incurred. In my judgment, however, the claim made by the plaintiffs for loss of profits is still too remote to be claimable on the tortious basis. A reasonable man would be able to infer some inconvenience caused to and expense incurred by a tenant in having to relocate as a result of his misstatements, but it would not be reasonably foreseeable that the effect of having to relocate an unobtrusive office located on the second storey of a row of shophouses from which an interior designing business was carried out would cause the loss of profits which the plaintiffs complained of.

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64 53. Whilst the plaintiffs are not entitled in this case to damages for loss of profit and/or loss of business, I do think that it could be contemplated and/or foreseeable that the process of locating new premises and moving there and setting them up for business would have a disruptive effect on the plaintiffs' business. This would be a short term effect which would coincide with the actual moving process in that the plaintiffs obviously would not be able to do much work during the time they spent packing up, actually moving their equipment and files and setting up the new office premises so as to be ready for business. The plaintiffs would be entitled to general damages for such disruption. The damages are not capable of precise estimation. In my assessment, the sum of $15,000 would be sufficient to compensate the plaintiffs for the inconvenience and loss of time sustained by reason of the move.

65 Conclusion

66 54. In the result, there will be judgment for the plaintiffs against both defendants in the sums of $28,894.49 as special damages with interest thereon at the rate of 6% p.a. from the date of the writ, and $15,000 as general damages. The total amount which I have awarded is less than $100,000 so the plaintiffs shall be entitled to costs against both defendants on the Subordinate Courts scale only. The second defendant has asked me to enter judgment for it against KOL, the third party. As I am not sure whether KOL was served with the third party proceedings, I decline to enter any judgment against them. I am, however, willing to hear further argument on this issue from the second defendant

67 JUDITH PRAKASH

68 JUDGE

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Judith Prakash J

Navinder Singh (Joseph Tan Jude Benny & Scott) for the plaintiffs
Andy Choy Wei Nung (Choy & Lopez) for the 1st defendant
Joe Chellam (Joe Chellam & Partners) for the 2nd defendant

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