# Protax Co-operative Society Ltd v Toh Teng Seng and Another
# [2001] SGHC 84

**Case Number** : Suit 640/2000
**Decision Date** : 30 April 2001
**Tribunal/Court** : High Court
**Coram** : Chan Seng Onn JC
**Counsel Name(s)** : Andrew Ee (Andrew Ee & Co) for the plaintiffs; Harbajan Singh (Daisy Yeo & Co) for the defendants
**Parties** : Protax Co-operative Society Ltd — Toh Teng Seng; Sng Soon Heng

## JUDGMENT:

### Grounds of Judgment

**Background**

1. Protax Co-operative Society Limited (the plaintiffs) is a registered co-operative society with over 400 Muslim taxi-drivers as members. They carried on business previously at Nos. 357, 359 and 359A Bedok Road, Singapore (the premises) and operated a coffee shop under the name of Protax Caf at Nos. 357 and 359 (1st storey units). Their office was at No 359A (the 2nd storey unit above). The plaintiffs rented out a number of the food stalls in the coffee shop including some spare rooms at the 2nd storey unit.

2. By a deed of assignment made on 15 November 1998, the plaintiffs took over a sublease from Mr Syed Ali Bin Syed Abdullah Sidek, who had leased the entire premises from Mr Ng Tiong Kiat (the head lessee). Sometime in September 1999, Mr Toh Teng Seng and Mr Sng Soon Heng (the defendants) purchased the said premises subject to two existing head leases granted to the head lessee by the former owners, Mr Lim Sing Kok and Mr Yong Kum Thong.

3. In respect of the 1st storey units, the head lease dated 1 June 1997 was for a period of 7 years expiring on 31 May 2004. The rental was $10,800 per month payable in advance and due on the 1st day of the month.

4. The head lease for the 2nd storey unit, dated 4 March 1998, was for a period of 6 years and 5 months from 15 December 1997 to 14 May 2004. The rent was $2,000 per month also payable in advance and would fall due on the 15th day of each month.

**Claim**

5. The plaintiffs alleged that the defendants entered the premises on 15 February 2000 without their permission. The plaintiffs and various other stallholders were told to leave the premises within 24 hours. On the following day, the defendants changed the locks and locked the premises.

6. The defendants then handed possession of the premises to their new tenants, Mdm Fariday Awall Walter and Mr Amin Awall, who proceeded to carry out renovations.

7. The plaintiffs averred that the defendants had committed trespass. The following damages were claimed:

> (a) Loss of rental from various stallholders at $15,300 per month from 16 February 2000 to 31 July 2003;

(b) Loss of profit from the plaintiffs drink stall;

(c) Loss of profit from the plaintiffs chicken rice stall;

(d) Loss of rental of 3 rooms at the 2nd storey unit;

(e) Loss or removal of various chattels at the premises; and

(f) Punitive or alternatively aggravated damages due to the mental distress and humiliation suffered by the plaintiffs representatives.

**Defence and Reply**

8. The defendants relied on the fact that they had served a writ of possession (DC Suit No. 5500/1999) on the head lessee for defaulting in payment of his rent. The head lessee in his defence in the DC Suit admitted the rent arrears and the defendants determination of the leases. The head lessee further counterclaimed for a refund of his rental deposit. The defendants regarded this as a wrongful repudiation on the part of the head lessee but accepted that repudiation nevertheless. Accordingly, the defendants re-entered the premises. To mitigate their loss, they re-let the premises to new tenants.

9. On 27 March 2000, about 6 weeks after the re-entry, the head lessee obtained a grant of relief against forfeiture from the court. The defendants appeal against that order was dismissed on 25 April 2000. Soon thereafter on 3 May 2000, the defendants returned the keys to the head lessee. There was no undue delay.

10. On these facts, Mr Harbajan Singh acting for the defendants, submitted that there was no trespass. Until the head lessee obtained relief, the head lessee had no status on the property. Mr Singh contended that the defendants had acted throughout in good faith on their right to forfeit under the leases for non-payment of rent, whereas the head lessee obtained relief against that forfeiture not on a right he had, but on an exercise of the Courts discretion based on equitable principles.

11. In answer to that, counsel for the plaintiffs, Mr Andrew Ee, argued that the defendants had waived their right to re-enter the premises by accepting the outstanding rent, which was paid directly into defendants joint bank account. Once that right was lost, the re-entry became unlawful and hence, the defendants had committed trespass.

12. Mr Ee submitted that the contemporaneous book entries recorded by the defendants showed that the deposits of money by the head lessee into the defendants joint account were accepted and treated by the defendants as payment towards the rent on a first-in-first-out basis. For simplicity, I have collated the particulars of the various payments in the table below:

**(a) Rent payments for Unit Nos 357 and 359**

| Due Date | Amount | Right to re-enter and determine lease if unpaid by | Date of Payment into Bank Acct | Defendants came to know on |
|---|---|---|---|---|
| 1.10.1999 | $10,800 | 22.10.1999 | 18.10.1999 | 1 |
| 1.11.1999 | $10,800 | 22.11.1999 | 18.12.1999 | 1 |
| 1.12.1999 | $10,800 | 22.12.1999 | 08.02.2000 | 15.02.2000 |
| 1.01.2000 | $10,800 | 22.01.2000 | 12.02.2000 | 17 or 18.02.2000 |
| 1.02.2000 | $10,800 | 22.02.2000 | 12.02.2000 | 17 or 18.02.2000 |
| 1.03.2000 | $10,800 | 22.03.2000 | 03.03.2000 | 1 |

**(b) Rent payments for Unit No 359A**

| Due Date | Amount | Right to re-enter and determine lease if unpaid by | Date of Payment into Bank Acct | Defendants came to know on |
|---|---|---|---|---|
| 15.09.1999 | $2,000 | 29.09.1999 | 24.09.1999 | 1 |
| 15.10.1999 | $2,000 | 29.10.1999 | 26.10.1999 | 1 |
| 15.11.1999 | $2,000 | 29.11.1999 | 03.01.2000 | 1 |
| 15.12.1999 | $2,000 | 29.12.1999 | 12.02.2000 | 17 or 18.02.2000 |
| 15.01.2000 | $2,000 | 29.01.2000 | 17.02.2000 | 1 |
| 15.02.2000 | $2,000 | 29.02.2000 | 10.03.2000 | 1 |
| 15.03.2000 | $2,000 | 29.03.2000 | 31.03.2000 | 1 |

**Counsels submissions and the law**

13. Mr Ee conceded that if the head lease had been validly determined by forfeiture, then the sublease, which depended on the head lease, would automatically determine. He rightly acknowledged that there would be no trespass if the re-entry took place after the head lease had been forfeited unless that forfeiture was waived.

14. On the facts, Mr Ee submitted that the defendants had waived their right of re-entry and forfeiture by accepting all the outstanding rent due on the 1st storey units on 12 February 2000 (i.e. 3 days before the date of re-entry).

15. Mr Ee referred me to Sections 18 and 18A of the Conveyancing of Law and Property Act (Cap. 61) in relation to the statutory restrictions on and relief against forfeiture of leases. Mr Ee correctly pointed out that Section 18 was not applicable to a re-entry or forfeiture due to non-payment of rent: see Section 18(9). However, he said that Section 18A applies where the lessor is proceeding by writ action to enforce a right of re-entry or forfeiture for non-payment of rent. I observed however that Section 18A does not deal with the central issues here, namely, when and how a right of re-entry and forfeiture for non-payment of rent may lawfully be exercised. Neither does it deal with the circumstances under which a wavier arises. These are governed by the common law.

16. As I will explain later, I found on the facts that the physical re-entry was peaceably effected. The defendants regained possession of the premises. The two head leases were lawfully forfeited for non-payment of rent. Although the defendants succeeded in their self-help remedy of physical re-entry without resorting to legal action, nevertheless the court can still grant relief on equitable grounds by restoring possession to the head lessee and on whatever terms it deems fit. However, it does not follow that a subsequent grant of relief against forfeiture necessarily converts an earlier lawful re-entry into a trespass.

17. Mr Ee contended that a lease can only be forfeited after a judgment or order for possession is obtained. Until such time that the landlord obtains an order or judgment for possession, the tenants lease has not been forfeited. On that basis, the re-entry was unlawful because no judgment or order for possession was obtained by the defendants prior to the re-entry.

18. I did not agree. In my judgment, the lessor may re-enter physically and peaceably, provided that his right to re-enter and forfeit has arisen under the terms of the lease and that right has not in the meantime been waived by him, whether inadvertently or otherwise. Where the landlord manages to secure actual possession without the assistance of the court, why must there always be a supporting order or judgment for possession before the lease can be forfeited? Regaining physical possession is clear proof of the landlords intention and election to forfeit and end the tenancy, subject of course to the courts discretion to grant equitable relief against the forfeiture.

19. Similarly, service of the writ of possession on the tenant is an unequivocal act amounting to a constructive re-entry and forfeiture. Mr Ees proposition that a judgment for possession is a pre-requisite for a lawful re-entry and forfeiture has no basis whatsoever in law.

20. Before I delve into the application of the law to the unique facts of this case, it is appropriate to examine the rather technical doctrine of re-entry and waiver in the law of landlord and tenant. The Law Commission in England in 1985 stated, quite justifiably, in para. 1.3 of its report, (1985) Law Com. No. 142, that the present law, "*besides being unnecessarily complicated, is no longer coherent and may give rise to injustice*". The Law Commission examined the various deficiencies and recommended a replacement with a new statutory scheme to simplify this area of the law. Be that as it may, the common law in Singapore mirrors that in England in this area.

**(a) Doctrine of Waiver**

21. Hill & Redmans Law of Landlord & Tenant 17th Edn succinctly summarises at p 451 the law in relation to waiver of a right of forfeiture:

> Waiver of Forfeiture Rule 131
>
> (1) A right of re-entry may be waived either expressly or impliedly. There is an implied waiver where the lessor with knowledge of the cause of forfeiture does any act which recognises the continued existence of the tenancy.
>
> (2) An action for, demand for, or receipt of rent accrued due since the cause of forfeiture with knowledge by the lessor of that cause is an implied waiver.
>
> (3) Where there is a continuing breach of covenant a waiver does not extend to breaches continuing beyond the date of the acts which constitute the waiver.

22. Good guidance in this area of the law can also be obtained from paragraphs 509 and 510 at p 475 and 476 of Halsburys Laws of England 4th Edn Reissue Vol 27 (1):

> **509. Waiver of forfeiture**

. The landlord has the option whether to take advantage of a forfeiture or not; and, if he elects not to do so, the forfeiture is waived. Such election may be either express or implied, and it is implied when, after the cause of forfeiture has come to his knowledge, the landlord does any act whereby he recognises the relationship of landlord and tenant as still continuing. If, however, it is shown that, with knowledge of the cause of forfeiture, the landlord has recognised the tenancy, he will be precluded from saying that he did not do the act with the intention of waiving the forfeiture. A landlord does not waive the forfeiture by merely standing by and seeing it incurred, as, for example, where the tenant makes alterations in breach of covenant and the landlord does not interfere; there must be some positive act of waiver. There is no difference in principle in the rules governing waiver of the right to forfeiture whether the breach is a failure to pay the rent or some other breach of covenant.

> **506. What acts amount to waiver.**
>
> A subsisting tenancy is recognised, and, if the landlord has notice of the cause of forfeiture, the forfeiture is waived:
>
> > (i) by bringing an action for, or by the mere receipt of, rent which has accrued due since the cause of forfeiture, whether the forfeiture is for condition broken or under an express proviso for re-entry;
> >
> > (ii)
> >
> > (iii) .

> A demand made by the landlord or his agent with knowledge of the breach for rent due after the cause of the forfeiture operates as a waiver. Where money is accepted, it is a question of fact whether it is tendered and accepted as rent; if it is so tendered and accepted, it is then a principle of law that, so long as the landlord then knew of the breach, the acceptance constitutes a waiver. Thus the fact that the landlord, by accepting rent, has no actual intention of waiving the breach does not prevent his action amounting in law to a waiver. Nor can the landlord prevent the waiver by demanding or accepting rent without prejudice. An acceptance of rent in error by a managing agents clerk will bind the landlord and waive the breach. **If, however, the landlord has already shown a final determination to take advantage of the forfeiture, for instance by commencing an action to recover possession, no subsequent act, whether receipt of rent, or distress, or otherwise, will operate as a waiver. Forfeiture is not waived by acceptance of rent accrued due before the cause of forfeiture unless at the same time the landlord recognises the tenancy as subsisting, as, for example, where he describes the tenant as such in the receipt**. (Emphasis is mine.)

23. I have also extracted certain useful portions from "The Forfeiture of Leases" by Mark Pawlowski (1993) at p 152 155:

> (1) An unambiguous demand for rent accruing due **after** the breach of covenant will constitute a waiver of forfeiture. .. Needless to say, the bringing of an action for rent accruing due after the breach will also amount to a waiver of the forfeiture: *Dendy v Nicholl*. Demand for rent qualified by such terms as "without prejudice" or "under protest" will operate as an effective waiver: *Segal Securities Ltd. v Thoseby*.
>
> (2) An acceptance of rent accruing due **after** the breach of covenant will constitute a waiver of forfeiture. .
>
> (3) A further point to bear in mind relates to the demand (or acceptance) of rent (a) in arrear and (b) in advance as regards continuing breaches of covenant. Demand (or acceptance) of rent payable in arrear will only amount to a waiver of the forfeiture for the period up to the date when the rent falls due and the landlord will not be precluded from taking advantage of the continuing breach after such date. On the other hand, a demand (or acceptance) of rent payable in advance will operate as a waiver of past and continuing breaches known to the landlord at the time of acceptance of the rent and for such period as the landlord knows they will continue. Footnote: But it, clearly, cannot constitute a waiver of future breaches of which the landlord has no advance knowledge.

24. It would appear that waiver is entirely a matter of law and not of the parties intention. The landlord thus could not, with knowledge of the event of forfeiture, avoid a waiver of forfeiture by accepting or demanding rent accruing due after that event by stipulating that the rent was accepted "under protest" or "without prejudice". The fact that the landlord did not intend to waive is irrelevant. As Parker J. said in *Matthews v Smallwood* (1910) 1 Ch 777 at p 786-787:

> If, knowing of the breach, he does distrain, or does receive the rent, then by law he waives the breach, and nothing which he can say by way of protest against the law will avail him anything.

25. Mr Ee cited to me *Hong Cheok Lam v Ong Sing Mai and 4 others* (1951) 17 MLJ 34. There the plaintiff rented out premises

on a monthly tenancy to one Mr Lim, who in breach of the terms of tenancy against subletting, had sublet parts of the said premises to the 4 defendants. On 7 November 1949, the plaintiffs solicitors wrote to Mr Lim, complaining of the subletting. On 2 December 1949, a notice to quit was served on Mr Lim. But prior to its expiration, the plaintiff accepted rent accruing due **after** the date of the complaint. When the subtenants refused to quit, the plaintiffs commenced recovery proceedings against them, *inter alia*, on the ground of the prohibited subtenancy. It was held on appeal from the Civil District Court in Singapore by Murray-Aynsley C.J. that acceptance of rent after knowledge of the breach amounted to a waiver of the right of re-entry. The English position in *Norman v Simpson* (1946) K.B. 158 was followed.

26. The Court of Appeal in Singapore in *Station Hotel Co v Malayan Railway Administration* [1993] 3 SLR 403 appeared to have accepted that the English principles on waiver of forfeiture on acceptance of rent after knowledge of breach would similarly apply in Singapore for contractual tenancies of non-rent controlled premises, although they have no application in relation to a breach of the provisions of the Control of Rent Act in respect of rent-controlled premises.

27. There is clear authority in Singapore that an actual receipt of rent prior or subsequent to the forfeiture, which rent accrued due before the cause of forfeiture, will not amount to a waiver. For it to operate as a waiver, the receipt must be of rent accruing due after the cause of forfeiture has arisen. Worley J. in *Low Bee Hoe (w) v Morsalim Chin* (1947) MLJ 3, an appeal from the Civil District Court in Singapore, had this to say:

> I do not know of any authority for the proposition that acceptance, after expiry of notice to quit, of rent accrued due for a period not going beyond the date of expiration of the notice can be a waiver of that notice and I cannot find any authority for it in the cases to which I was referred. The case most in point is *Price v Worwood* (1859) 28 L.J. 329 where Baron Martin said "**a receipt of rent to operate as a waiver of forfeiture must be a receipt of rent which was become due after the forfeiture was incurred and the mere receipt of the money afterwards the rent having become due previously is of no consequence and for the very plain reason that the entry for a condition broken does not at all affect the right to receive payment of a pre-existing debt." In my view this reasoning applies equally to receipt of rent accrued due prior to the expiry of a notice to quit.** (Emphasis mine.)
>
> .
>
> As pointed out in *Davies v. Bristow* (1920) 3 K.B. 428, the notice having expired, the landlord can no more waive it than he can waive the effluxion of time: the contractual relationship between the parties is ended but, whereas at common law if there is no fresh agreement between them, (which may if necessary be inferred from the acceptance of rent) the **former tenant becomes a trespasser**,

28. In *Price v Worwood* (1859) 4 H & N 512, the plaintiff brought an action to recover possession of three houses on account of the tenants failure to insure. However, the plaintiff received rent from the undertenants of the premises the day before he took out the writ. Channell B. held that the plaintiff must show that **as of the date of writ** he has the right to enter the premises before he can succeed in his action of ejectment. He must show that the premises had remained uninsured **as at the date of writ** and under circumstances that would entitle him to take advantage of the forfeiture. He found that there was a continuing breach between date of payment of rent and the time the action was brought. Martin B. further added that *there would be a good right to maintain the ejectment, for the non-insurance is a continuing breach, and its continuance during the period between the time of the payment of the rent on the 23 December and the commencement of the suit on the 24th is sufficient for the purpose of entitling the plaintiff to his verdict.*

**(b) Continuing Breach**

29. The Court of Appeal in England dealt with another case of continuing breach in *Penton v Barnett* [1898] 1 QB 376. The headnote reads as follows:

> A lease contained a general covenant to repair and a covenant to repair within three months after notice. The premises being out of repair, the lessor gave notice to the lessee under the Conveyancing Act, 1881, to repair within a given time. Three days after the expiration of the notice a quarters rent became due. No repairs having been done by the tenant, the lessor brought an action to recover possession, and in the action claimed the quarters rent:-
>
> Held, that, the breach of covenant being a continuing one, no new notice was required in respect of the non-repair after the expiration of the time specified in the notice, and that the claim for rent did not affect the right to possession in respect of non-repair after the date when the rent fell due.

30. In *Pentons* case, A.L. Smith L.J. accepted the proposition that the claim for rent up to 25 December 1896 was at most an election to treat the defendant as a tenant up to that date. But inasmuch as between that date and 14 January 1897, being the date the writ of possession was issued, the premises had remained in the same state of disrepair, there was a breach of covenant between those dates in respect of which the plaintiff could maintain his action for possession. Ribgy L.J. said that the landlord had a power of re-entry so long as there was a broken covenant and a continuing breach. As nothing was done since the notice to repair, the position on 14 January 1897 would be that the plaintiff had the right to determine the tenancy by the issue of the writ, and to sue in respect of such rights as had accrued to him during the tenancy.

31. The court in *Doe. Dem. Ambler v Boodbridge* (1829) 9 B&C 377 held that the use of rooms in a manner prohibited by the lease was a continuing breach, and that the landlord was not, by receiving rent, precluded from taking advantage of the forfeiture because the continued use after receipt of rent was a new breach of covenant every day during the time that they were so used.

32. In *Doe v Jones* (1850) 5 Exch 498, the judges had this to say:

> Pollock CB: Where reasonable time for repair given in the notice was still running, there was no breach to waive as opposed to a case of breach before receipt of rent, where the acceptance of rent is a waiver of the forfeiture actually incurred.
>
> Alderson B: The receipt of rent is a waiver of all forfeitures, which are, so to speak, single and complete, and are not in the nature of continuing forfeitures. So with respect to continuing forfeitures, where the lessee is bound from time to time to keep the premises in repair, and he omits for an unreasonable time, but afterwards repairs them, there the receipt of rent waives the previous forfeiture. But where the matter is plainly a continuing breach, the only question is, whether, when the party seeks to re-enter, the premises have been an unreasonable time out of repair and so continue.
>
> Rolfe, B: I am of the same opinion. If, instead of "a reasonable time," the lease had named five days, within which the lessee was to repair, there could have been no difficulty, because the 5 days had elapsed on 25 March 1847: the receipt of rent would have been a waiver of the actual breach, but it would have been no waiver of a neglect to repair between the 21st and 25th, for then there

> was no complete breach.
>
> Platt B: It is a fallacy to say that the receipt of rent was a waiver of the breach of contract to repair, for it was a continuing breach, and until the repairs were perfected, the lessors of the plaintiff were entitled to re-enter for the forfeiture.

33. The Court of Appeal in *Downie v Turner* [1951] All ER 416 took the view however that subletting in breach of the covenant was not a continuing or recurring breach. It was a once and for all breach taking place at the time the subletting first took place in February 1946. After knowing of the subletting, the landlord continued however to accept rent until 13 February 1950. In April 1950, the landlord served a notice of forfeiture. The landlord was held to have waived that subletting because he had, with knowledge of it, accepted rent subsequent to the date of the breach.

34. In *Farimani v Gates* [1984] 2 EGLR 66, the Court of Appeal explained the difference between a recurring breach and a single breach in the following terms:

> If an obligation is to perform an act by a given time, once that time has elapsed and the act has not been performed, there is a breach of a single obligation and not of a continuing one. The fact that it still lies within the power of the lessee to perform the act cannot affect the nature of his obligation. In this field of law a reference to a continuing breach is a way of referring to breaches of a continuing obligation and does not refer to the ability to remedy a single breach. There is no difference between an obligation to perform an act by a given date and an obligation to perform an act within a reasonable time. If the tenant fails to perform the act within a reasonable time he has broken his obligation, which is a single and not a continuing obligation: see *Re King* [1963] 1 Ch 459, CA, in which Lord Denning MR said at p 478:
>
> > Let me next take the covenant to reinstate. Suppose the premises are damaged by fire. The lessee does not reinstate within a reasonable time. The breach is over once and for all, but its effect continues.

35. With guidance from the authorities above, I therefore hold that just as with the general covenant to repair, the obligation to pay rent on the due date each month throughout the entire duration of the lease is a continuing obligation. It gives rise to a continuing right of re-entry and a continually recurring cause of forfeiture should the obligation to pay rent be breached. If the rent is not paid by the grace period stipulated, each day thereafter that the accumulated rent or part thereof remains unpaid must be treated as a fresh breach of obligation, entitling the landlord to exercise his right of re-entry as provided in the lease. As the rent accrues daily, a failure to pay rent on the due date cannot be regarded as a once and for all breach. It is different from a breach by way of subletting, where the breach (i.e. the act of subletting) is regarded as a once and for all breach of covenant taking place at the time the sublessee was first let into the premises.

**(c) Service of writ of possession**

36. Upon service of a writ of possession or after a physical re-entry, the right of re-entry ceases to be capable of waiver. It has been consummated. Thus, acceptance of rent or levying distress after service of a writ of possession cannot be regarded as conduct amounting to a waiver.

37. In *Grimwood v Moss* (1871) L.R. 7 C.P. 360, it was held that the landlords distress for rent after the date of service of proceedings for possession was not conduct amounting to a waiver.

38. In *Civil Service Co-operative Society v Mc Grigors Trustee* [1923] 2 Ch 347, the defendant lessees relied on a demand for, payment and acceptance of, rent by the plaintiff landlords as a waiver since action brought of the causes of forfeiture, namely, a breach of covenant against assignment or otherwise parting with the demised premises and the bankruptcy of the lessees. The demand for rent was made with knowledge of the bankruptcy and was for rent accrued in part before the bankruptcy, in part between the bankruptcy and the writ, and in part subsequent to the writ. The plaintiffs claimed in the writ that they were entitled to recover possession of the premises as on a forfeiture of the lease, delivery up of possession and mesne profits. On the question whether the demand for rent operated as a waiver of the forfeiture, Russell J., answered in the negative and held that the plaintiffs were entitled to recover possession on the ground of the tenants bankruptcy. In the course of his judgment, Russell J. referred to *Dendy v Nicholl* [1893] 2 Ch. 271, as a case where the landlord, with knowledge of an underletting in breach of covenant, had sued the tenant for arrears of rent accruing subsequent to the underletting, and obtained payment. After the issue of the writ for rent, but before actual payment of the amount claimed, the landlord commenced an ejectment action based on non-payment of rent and the underletting. Although the court there held that the bringing of the action for rent, and acceptance of the rent was a waiver of the right of re-entry, which waiver occurred before the ejectment brought, Russel J. did not think that the court touched on the real question namely, whether the issue and service of a writ in ejectment was such a final election by the landlord to determine the tenancy that a subsequent receipt of rent was no waiver of the forfeiture. He then said:

> In my opinion the authorities establish that this is so. In *Jones v. Carter* 15 M. & W. 718, Parke B. held that after ejectment brought, there being no evidence of actual re-entry by the landlord, the landlord could not sue for rent; and he cites with approval a decision of Lord Tenterden that the receipt of rent after ejectment brought for a forfeiture was no waiver of such forfeiture: *Doe v. Meux* (1824) 1 C. & P. 346. To the same effect is the case of *Grimwood v Moss* L.R. 7 C.P. 360, where it is definitely stated that the bringing of an ejectment action is an irrevocable election to determine the tenancy: see also *Rex v. Paulson* [1921] 1 A.C. 271; and *Evans v. Enever* [1920] 2 K.B. 315. I adopt the words of Lord Coleridge J. in *Evans v. Enever* where he says at p 320: "**There is a series of cases which establish that if an action is brought for recovery of possession for breaches of covenants in the lease that is an irrevocable election to determine the lease, and that no subsequent acts of the plaintiff can be relied on as qualifying that position."** (Emphasis is mine.)

39. After an analysis of the various authorities, Sachs J in *Segal Securities, Ltd. v Thoseby* [1963] 1 All E.R. 500 said:

> Clearly, [a demand for or acceptance of rent payable in advance] cannot be a waiver of future breaches of which the landlord has no advance knowledge;. Equally clearly, an acceptance of rent in advance does waive a non-continuing breach in the past: such a waiver applies both to the past and to the period covered by the rent. As regards continuing breaches, it seems to me that in the absence of express agreement, the acceptance of rent in advance can, at highest, only waive those breaches that are at the time of demand known to be continuing, and to waive them for such period as it is definitely known that they will continue.

40. In short, a demand or acceptance of rent due before a breach of covenant does not *per se* constitute a waiver. Neither does demanding nor accepting rent after a re-entry and forfeiture waive the forfeiture that has taken place because an irrevocable election to determine the lease has already been made. Thus, any acts of the lessor subsequent to a constructive re-entry and forfeiture by the issue and service of a writ of possession, or subsequent to an actual peaceable re-entry, will not be capable of waiving the forfeiture. However, if there is no writ issued, or no physical or constructive re-entry as yet, a demand or acceptance of rent accrued due after the date of the breach of covenant or the date on which the right of forfeiture arises will constitute a waiver irrespective of whether the demand or acceptance of the rent is on a without prejudice basis. This applies just as well to a

breach arising from non-payment of rent.

**(d) Dispensation with notice of formal demand**

41. The words whether formally demanded or not often appear in forfeiture provisions for non-payment of rent because forfeiture cannot be obtained at common law, unless there is a formal demand for rent. For this reason, leases often expressly dispense with the need for a formal demand.

42. Since the common law requires a formal demand before forfeiture can be effective, it necessarily means that a demand for rental arrears accumulated prior to the cause of forfeiture itself cannot amount to a waiver of the forfeiture. Otherwise, it would be defeating the very objective (i.e the forfeiture) that is sought. To constitute a waiver of forfeiture, the demand for rent must necessarily be for rent accruing due after the cause of forfeiture has arisen. Therefore, demands for rent accruing due before the cause of forfeiture cannot have the effect of waiving the forfeiture.

43. What also seems clear after a review of the authorities is that where it is a new breach surfacing or an existing breach continuing after the act of waiver, then a fresh right of re-entry and forfeiture flowing from that breach will arise. A waiver operates only in respect of those breaches antedating the landlords act of waiver.

**(e) Forcible entry**

44. A landlord entitled to possession of land may enter forcibly and yet the tenant may have no civil remedy against him for that entry although he is liable to criminal proceedings: Hill & Redmans Law of Landlord and Tenant 17th Edn at p 521. In *Blades v Higgs* (1861) 10 CBNS 713, Erle C.J. delivering the judgment of the court said:

> It has been decided that the owner of land entitled to the possession may enter thereon and use force sufficient to remove a wrong-doer therefrom. In respect of land, as well as chattels, the wrong-doers have argued that they ought to be allowed to keep what they are wrongfully holding, and that the owner cannot use force to defend his property, but must bring his action, lest the peace should be endangered if force was justified: see *Newton v. Harland*, 1 M. & G. 644, 1 Scott, N. R. 474. But, in respect of land, that argument has been overruled in *Harvey v. Brydges*, 14 M.& W. 442. Parke, B., says: "Where a breach of the peace is committed by a freeholder, who, in order to get possession of his land, assaults a person wrongfully holding possession of it against his will, although the freeholder may be responsible to the public in the shape of an indictment for a forcible entry, he is not liable to the other party. I cannot see how it is possible to doubt that it is a perfectly good justification to say that the plaintiff was in possession of the land against the will of the defendant, who was owner, and that he entered upon it accordingly; even though in so doing a breach of the peace was committed.
>
> In our opinion, all that is so said of the right of property in land, applies in principle to a right of property in a chattel, and supports the present justification. If the owner was compellable by law to seek redress by action for a violation of his right of property, the remedy would be often worse than the mischief, and the law would aggravate the injury instead of redressing it.

**Events leading to the re-entry and re-possession**

45. On 30 November 1999, the defendants, through their solicitors Jing Quee & Chin Joo, sent a letter of demand for payment **by 6 December 1999** of the outstanding November 1999 rent (amounting to $10,800) in respect of the 1st storey units. Another letter of demand dated the same day was issued for the arrears of rent also for November 1999 (amounting to $2,000) in respect of the 2nd storey unit. Both letters to the head lessee clearly stated that in the event of non-payment, the defendants would commence legal action to recover the arrears of rent without prejudice to their rights to re-enter and take possession of the premises pursuant to Clause 4 (a) of the respective tenancy agreements. Each letter further demanded payment of the costs and disbursements incurred to date of $51.50 cts.

46. Clause 4(a) of the head lease for the 1st storey units states:

> 4. Provided always and it is hereby agreed:
>
> > (a) That if any part of any rent hereby reserved shall at any time be arrear for twenty-one days (**whether formally demanded or not**) or if the tenant shall neglect to observe any stipulation on his part herein contained or .. the landlord **may at any time hereafter re-enter upon the demised premises** and **thereupon this demise shall absolutely determine**; (Emphasis is mine.)

47. Clause 4(a) of the head lease for the 2nd storey unit was in similar terms as follows:

> 4. PROVIDED ALWAYS and it is hereby agreed as follows:
>
> > (a) If the rent hereby reserved or any part thereof shall be unpaid for fourteen (14) days after becoming payable (**whether formally demanded or not**) ... then**... it shall be lawful for the Landlord at any time thereafter to re-enter upon the premises** or any part thereof in the name of the whole and **thereupon this tenancy shall absolutely determine** but **without prejudice to the right of action of the Landlord in respect of any antecedent breach** of this Agreement by the Tenant. (Emphasis is mine.)

48. Clearly, they must be construed as forfeiture clauses, where the right of forfeiture accrues only after the grace period has elapsed and the overdue rent remains unpaid. The right then becomes exercisable at the option of the landlord by a re-entry into the premises. That re-entry may be effected either by a peaceable physical re-entry, or by issuing and serving a writ of possession which amounts to a constructive re-entry in law. But I would not go so far to construe the above provisions as giving a right to the landlord to terminate the leases absolutely (as opposed to a mere right to forfeit) so as to deny the tenant his access to relief against forfeiture altogether. Should a demand for rent be made during the grace period, it will not amount to a waiver because it remains a demand before the right of forfeiture has arisen. There is nothing to waive as yet.

49. The requirement of a formal demand by the common law before the landlord can forfeit for non-payment of rent has been dispensed with in this case by agreement of the parties with the insertion of the words "*whether formally demanded or not*" into the proviso for re-entry under clause 4(a) in both leases. The landlord may thus re-enter and forfeit the lease without any

prior demand in the event of a breach of this clause for non-payment of rent.

50. When the head lessee failed to pay by the date stipulated in the letters of demand (i.e. 6 December 1999), the defendants filed a writ of summons (DC Suit No 5500 of 1999) on 13 December 1999, wherein they claimed that by reason of the head lessees failure to pay the rent both for November and December 1999, they had acquired and were exercising their right to forfeit the respective tenancies, and thus, they were entitled to possession of the premises. They then prayed, *inter alia*, for immediate delivery of possession, payment of rental arrears and mesne profits until delivery of vacant possession. There was nothing in the writ claiming any relief inconsistent with an unequivocal demand for possession or any relief consistent with a continuation of the lease. Clearly, by the time the writ was filed, a valid cause of re-entry and forfeiture had arisen because the grace periods for payment of the November 1999 rent in respect of both head leases had expired.

51. But before the writ was served, the head lessee banked $10,800 directly into the defendants joint bank account No. 014-21970-6 with DBS on 18 December 1999 following the previous agreed mode of payment by direct cheque deposits. Although this covered the rent for November 1999, it left unpaid the overdue December 1999 rent for the 1st storey units. Neither were the November and December 1999 rents for the 2nd storey unit paid.

52. For the period between the issue and service of the writ, May J. in *Richards v De Freitas* (1974) 29 P & CR 1 adopted the view that there is no *locus poenitentiae* (i.e. opportunity of repentance). Thus acceptance of the rent during this period would not prejudice the landlord or amount to a waiver of the cause of forfeiture, which had accrued prior to and on which the issue of the writ of possession was based. As such, acceptance of the $10,800 payment in respect of the November 1999 rent for the 1st storey units did not waive the right of forfeiture claimed in the writ, which was pending service on the head lessee.

53. Since the breach of the rent clause must be regarded as a continuing breach, the cause of forfeiture under clause 4 (a) would naturally be recurring continually. Even if the late payment and acceptance of the November 1999 rent in respect of the 1st storey units could waive the defendants right to forfeit on account of the head lessees failure to pay the November 1999 rent by 21 November 1999, nevertheless it could not in my judgment constitute in law a waiver of the fresh breaches involving the non-payment of the next months rent for the 1st and 2nd storey units. The right to forfeit in respect of these fresh breaches for non-payment of the December 1999 rent eventually crystallised on 21 December 1999 for the 1st storey units and on 29 December 1999 for the 2nd storey unit after the respective grace periods expired. The crystallisation arose subsequent to the date (i.e. 18 December 1999) on which the head lessee banked in the sum of $10,800 for the November 1999 rent for the 1st storey units. Hence, any acceptance by the defendants of this sum, whether as rent, damages or otherwise, could never constitute a waiver of these fresh breaches that followed. In my view, the defendants here were fully entitled to take advantage of any subsequent fresh breaches or continuation of a breach: Paragraph 511 Vol 27(1) Halsburys Law of England (4th Edition Reissue) at p 478; *Penton v Barnett* [1898] 1 QB 276; *New River Co v Crumpton* [1917] 1 KB 762.

54. As a result of that incomplete settlement of the overdue rent, the defendants solicitors wrote a letter dated 22 December 1999 to the head lessee stating that the $10,800 received had been applied towards payment of arrears of rent accumulated before December 1999 on the basis of the principle of first-in-first-out. The defendants solicitors notified the head lessee in no uncertain terms that acceptance of this payment and any subsequent payment was to be without prejudice to their clients rights accrued to date, including their right to determine the tenancy and recover possession of the premises together with all costs and expenses arising therefrom. In particular, their acceptance of payment was not to prejudice their clients rights in DC Suit No 5500 of 1999, which they had commenced against the head lessee. The defendants solicitors were right to take advantage of the principle of no *locus poenitentiae* between the issue of the writ and its pending service. I noted that the head lessee already had prior notice that if they did not pay up the November 1999 rent arrears by 6 December 1999, the defendants would commence action. If the head lessee did not take that seriously, he had only himself to blame.

55. The defendants solicitors then enquired from the head lessee if he had appointed solicitors to accept service of the writ or was prepared to accept service at the office of the defendants solicitors. No reply was received. By this letter, the head lessee should be aware that the defendants had commenced action to recover possession, although the writ had not been formally

served on him. To be effective in law to bring about a notional re-entry and an effective forfeiture of the lease, the lessor must serve the writ of possession on the tenant to signify his intention to treat the lease as at an end.

56. In the meantime, the head lessee quickly deposited a further sum of $2000 on 3 January 2000 directly into the defendants joint bank account to cover the long outstanding November 1999 rent, this time for the 2nd storey unit. As explained earlier, there is no *locus poenitentiae* between the issue and service of the writ entitling a lessee to tender the rent and avoid forfeiture. In *Richards v De Freitas* (1974) 29 P & CR 1), May J. took the view, though it was *obiter dictum*, that even if there was acceptance of payment of the rent between the date of issue of the writ and its service, the position of the landlord would not be prejudiced as against his tenant. On the facts of that case, he could not see any suggestion that the acceptance would have been with any intention of creating a new tenancy in anyone. There could be no possible waiver of any forfeiture if the alleged ground of forfeiture was the failure to pay rent within the stipulated 21 days.

57. **On 21 January 2000, the defendants solicitors effected substituted service of the writ on the head lessee** by pasting a copy of the writ and order of substituted service on the front door of No 359A and on the notice board of the Supreme Court. The plaintiffs, having their office then at No 359A, should have been fully aware of this writ, and hence, of their head lessees failure to pay rent to his landlord.

58. As on the date of service of the writ (i.e. 21 January 2000), the grace periods for payment of the December 2000 rents for the 1st storey and 2nd storey units had long expired without any payment forthcoming from the head lessee. The defendants were no doubt entitled under clause 4 (a) of the respective leases, to re-enter the premises at any time on account of these fresh and continuing breaches (as a further ground) to determine the leases. As stipulated in both leases, no formal demand for rent was necessary as a pre-requisite for re-entry and forfeiture.

59. By this act of serving the writ, the defendants finally conveyed to the head lessee (and for that matter his underlessees too) their unequivocal demand for immediate recovery of possession pursuant to their right under the leases. It was an unqualified and conclusive election to determine both leases. In serving the writ, they had in law notionally re-entered the premises and exercised their right to forfeit the two leases. As stated in *Canas Property Co Ltd v K L Television Services Ltd* [1970] 2 All ER 795 (C.A.), the landlord must not only issue, but also **serve** the writ of possession on the tenant, if he wants to effect forfeiture for breach of a covenant in a lease by way of a notional physical re-entry. I could see no reason why the defendants should be precluded from suing for the rent accrued due prior to the date of the notional re-entry and forfeiture on 21 January 2000. Since the rent was payable in advance and not in arrear, all rents accrued due including the monthly rent falling due on 1 January 2000 could be claimed as arrears of rent, without any danger arising from a waiver of the right of re-entry or forfeiture. Had it been rent payable in arrear, then the rent could only be claimed up to 21 January 2000 and thereafter, it would have to be claimed as mesne profits until delivery up of possession. Where the head lessee continues to remain in possession, he must be held liable for mesne profits, which are technically damages for trespass.

60. A judgment for possession, if obtained, would of course finally terminate the lease, and that termination would then relate back to the date of forfeiture. If the landlord had thereafter re-entered pursuant to that judgment for possession, relief against forfeiture would no longer be possible. But in this case, the landlord physically re-entered **before** obtaining judgment for possession. Hence, the court had the power subsequently to grant the tenant relief against forfeiture upon the head lessees application. But that relief subsequently granted could not retrospectively turn the defendants in legal possession into trespassers, which apparently was what Mr Ee had been precipitously hanging his clients case on.

61. I found Paragraph 508 at p 473 of Vol 27(1) Halsburys Laws of England (4th Edition Reissue) to be enlightening. It states:

> **508. What amounts to re-entry.**
>
> The terms of a proviso for re-entry require that, if the landlord elects to determine the lease for a forfeiture, he must do so by re-entry, which the landlord may effect by physically entering upon the premises with the intention of determining the tenancy or by the issue and service of proceedings for recovery of possession of the premises. In the case of forfeiture for non-payment of rent the landlord must first make formal demand for payment, unless this requirement is dispensed with by suitable

words in the proviso, or by statute. Usually the formal demand is expressly dispensed with by inserting the words, whether formally demanded or not,

> Actual entry is not necessary in order to take advantage of the forfeiture. When the cause of forfeiture is complete, the landlord may bring an action to recover possession, and the bringing of the action is equivalent to actual entry. If the writ contains an unequivocal demand for possession, the service of the writ operates as a final election to determine the term, whether judgment is obtained or not. (Emphasis is mine.)

62. In *Billson v Residential Apartments Ltd.* [1992] 2 W.L.R. 15 (H.L.), Lord Templeman pointed out that:

> In order to exercise his option to determine the lease the landlord must either re-enter the premises in conformity with the proviso or must issue and serve a writ claiming possession. The bringing of an action to recover possession is equivalent to an entry for the forfeiture.

63. Concluding on this point, the defendants had notionally re-entered and forfeited the leases by serving the writ of possession on 21 January 2000 pursuant to their right of re-entry and forfeiture under the respective leases. Being a valid constructive re-entry and forfeiture, the defendants would not in law be liable to any trespass on his own premises, should he follow up with a peaceable physical re-entry to re-gain possession.

**Effect of Pleadings in DC Suit No 550 of 1999**

64. Other subsequent events fortified the defendants defence here. Without paying the December 1999 and January 2000 arrears of rent, the head lessee, through his solicitors Andrew Ee & Co., filed and served a defence on 3 February 2000 in DC Suit No 5500 of 1999, admitting the rental arrears. The head lessee said that he intended to settle the arrears promptly and would seek relief from forfeiture. This was no more than a mere statement of a future course of action intended by him rather than a specific legal or equitable defence as such. In fact, the head lessee implicitly recognised in his defence that the lease had been forfeited. Otherwise, why should he seek relief from forfeiture? It must be pointed out that by now (i.e. 3 February 2000), the grace periods had expired not only for the December 1999 but also for the outstanding January 2000 rental for the premises under the two head leases.

65. What was more significant was that the head lessee had on the advice of his solicitors, counterclaimed for the return of his deposit of $32,400 being the equivalent of 3 months rental, and averred in unambiguous terms that the leases had been determined. Paragraph 9 of the head lessees defence, which I regarded as fatal to the plaintiffs case, was as follows:

> 9. The said **Deposit should be refunded** to the Defendant [i.e. head lessee] upon the determination of the said [Lease] Agreements, which **determination has taken place upon the issue of the Plaintiffs Writ** [i.e. Writ of Mr Toh Teng Seng and Mr Sng Soon Heng] in this present action. (Emphasis is mine.)

66. Either this amounted to a repudiatory breach in the form of a repudiatory termination of the two leases by the head lessee, which the defendants were shown later to have accepted, or it was an express acceptance by the head lessee of the determination of the leases by the defendants upon the issue of their writ of possession. Stephen Sedley J. in *Hussein v Mehlman* [1992] 2 EGLR 87 was of the view that the doctrine of repudiation applied to tenancies. See also *Chartered Trust plc v Davies* [1997] 2 EGLR 83 and *Nyehead Developments Ltd v RH Fibreboard Containers Ltd* [1999] 2 EG 139.

67. Subject to any relevant statutory provisions on relief against forfeiture and to the general law of forfeiture applicable to tenancies, I would hold that this repudiatory determination of the leases by the head lessee was capable of being accepted by

the landlord resulting in a premature determination of the leases, and in effect a forfeiture, but this should not prejudice the right of the tenants to apply for relief against the forfeiture nevertheless. It would be wrong I think to allow this common law doctrine of repudiation to circumvent the protection or relief otherwise available to tenants against forfeiture of their leases.

68. In my view, the head lessee had no basis to seek a refund of his deposit unless he also considered the leases as having been determined by the act of the defendants in issuing the writ for, *inter alia*, recovery of possession, which determination the head lessee must in turn have agreed to by filing his counterclaim in the terms he did. His unequivocal demand for an early refund of his rental deposit necessarily evinced his intention to bring the leases to a premature end. These new circumstances distinguished this case and set it apart from the authorities cited by the plaintiffs in support of their argument on waiver of forfeiture.

69. Based on this defence as filed, I concluded that the defendants and the head lessee had, through this unexpected turn of events, unequivocally come to an agreement to treat the two tenancies as forfeited as of 3 February 2000, the date on which the head lessees defence was served on the defendants. It must follow that a subsequent peaceable physical re-entry into the premises by the defendants, as the owners, to re-gain possession under these circumstances would never amount to a trespass against the head lessee, or his undertenants for that matter, namely, the plaintiffs in this case, who could have no better right than the head lessee in this respect. Needless to say, the rights of the plaintiffs here as the subtenants, would be destroyed once the head lessees lease was lawfully forfeited, though of course, the plaintiffs might later apply to the court themselves for relief from such forfeiture.

70. Moreover, I did not think it conscionable that the defendants should be regarded as trespassers and be made to pay damages when they had in the first place acted *bona fide* in the belief that the head lessee had himself adopted the position that the two tenancies were terminated, and the defendants therefore peaceably re-entered the premises to regain possession, and found new tenants to lease the premises thereafter.

71. For the reasons given, the plaintiffs claim must be dismissed. In fact, once the head lease had been lawfully forfeited, the undertenants must themselves be regarded as trespassers in relation to the landlord and not the other way round. It would be preposterous to allow these trespassing undertenants to claim damages for trespass against the landlord.

72. It would be worthwhile reiterating at this juncture that the fact that a tenant could subsequently apply for relief against forfeiture did not mean that the earlier lawful re-entry pursuant to a forfeiture clause for the failure to pay rent would *per se* constitute a trespass. The landlord could validly hold on to the re-possessed premises until the court subsequently intervenes by granting relief against the forfeiture of the lease, whereupon the landlord will have to surrender possession of the premises to the tenant. But until the tenant succeeds in obtaining such an order for relief, it will be the landlord (as opposed to the tenant) who has the right to immediate and continued possession of the premises. Just as the landlord cannot possibly claim rent for that interim period whilst he is in occupation prior to surrendering possession to the evicted tenant in conformance with the court order granting relief, neither can the evicted tenant claim damages for trespass because (a) the landlord has gained lawful possession following a lawful re-entry under the terms of the lease, and (b) the tenant is no longer under an obligation to pay rent for which the *quid pro quo* of peaceable enjoyment of the demised premises during that interim period without any interruption from the landlord no longer exists.

73. In summary therefore, where an order for relief against forfeiture is granted before physical re-entry, the landlord will not be entitled to re-enter. But where the order for relief is obtained after a lawful physical re-entry done peaceably, as in this case, the landlord cannot be said to have trespassed during the interim period when he remains in possession prior to the granting of the relief by the court.

74. In the reply and defence to the counterclaim in DC Suit No 5500 of 1999, filed and served on 11 February 2000, Mr Toh Teng Seng and Mr Sng Soon Heng (the defendants here) made clear to the head lessee that they were compelled to issue proceedings to recover possession of the premises due to the non-payment of rent by him as the head lessee. Damages were claimed for loss of rent suffered for the remainder of the term from the date on which possession was recovered.

75. In their reply, the defendants did not dispute paragraph 9 of the defence of the head lessee (which asserted that the leases were determined upon issue of the writ). **Effectively, the defendants had on 11 February 2000 in their reply accepted the legal and factual position adopted by the head lessee**. The defendants only contended in a very limited way that the refund of the full deposit was misconceived, or alternatively, that it was premature, since the cost of making good any damage to the premises found after recovery of possession would have to be deducted from that deposit. Clearly, the defendants were not by any means affirming the continuance of the tenancy in their reply by disputing that the head lessee was not entitled immediately to a full refund of the deposit. The defendants stand all along had been fairly clear and consistent that they wanted the premises back and the two leases terminated. Thus, there could be no room for the head lessee to argue thereafter that the leases had not been determined or that there was a positive act of waiver or forfeiture by the defendants somewhere along the line. If indeed the head lessees stand was that the leases on the demised premises had not been determined, then it was the head lessee who had misled the defendants into (a) thinking that the leases had been so determined, and then (b) acting on that basis to their detriment. The head lessee would be estopped in law from claiming that there was now no determination of the leases.

76. Subsequent voluntary payments by the head lessee, intended for rental arrears, could not alter the fact that in law, the tenancies had been determined by agreement of the parties. Obviously there was no way that the defendants could stop the head lessee from dropping cheques drawn in favour of the defendants into the quick cheque deposit box in the hope of reviving the terminated tenancies. These payments in, whether for rental arrears, damages or otherwise, could not amount to any waiver of the lawful forfeiture that had occurred. Nor could they resurrect the tenancies after they had been determined in the manner explained. The head lessee could not be allowed to blow hot and cold. The writ of possession had been issued and served on the head lessee long before, and according to the authorities, no subsequent acts, including acceptance of rents thereafter, could waive that final election made by the landlord to re-enter and forfeit the leases.

77. In fact, the solicitors for the defendants subsequently made quite clear in their letter of 14 February 2000 (the day immediately preceding the re-entry) to the head lessees solicitors that subsequent payments received after the date of issue of the writ would be regarded as payment towards arrears of rent and/or damages **without affecting the determination of the two leases**. The defendants solicitors wisely noted in the same letter that the head lessee had in his defence conceded (a) liability for the arrears of rent and (b) that the tenancy agreements had been determined.

78. In essence, this letter confirmed the determination of the tenancies as agreed. It was also fairly obvious from what was stated therein that the withholding of the refund of the rental deposits by the defendants was never on the basis that the tenancies were intended to continue, but that the refunds would be temporarily withheld and paid over only after delivery of vacant possession subject to any breaches under the leases for which the defendants would be entitled to make deductions from the deposit held before its refund.

79. It must be pointed out that as of this date, the defendants were still unaware that the head lessee had deposited directly into the defendants joint DBS account a sum of $10,800 on 8 February 2000, and another sum of $21,600 on 12 February 2000 with the intention of covering the 3 months arrears of rental (i.e. December 1999, January and February 2000) for the 1st storey units. On 12 February 2000, the head lessee deposited a further sum of $2,000 sufficient to cover the overdue rental for December 1999 but not the January and February 2000 arrears for the 2nd storey unit. If one were to treat these 3 units as a whole, one could not say that there were no arrears whatsoever outstanding as at the critical date 15 February 2000, the date of the alleged trespass. As of that date, the rent for the 2nd storey unit remained in arrears despite the flurry of last minute deposits into the defendants joint bank account to avoid forfeiture under the terms of the leases.

80. In any case, Mr Sng Soon Heng testified that it was only later, on or about the 15 February 2000, that he first knew of this deposit of $10,800. As for the other deposits of $21,600 and $2,000, he learnt of them on or about 17 or 18 February 2000. His wife informed him. His wife would check with the bank once a week to find out if there was any payment from the head lessee after the rentals began falling into arrears. As there was no challenge by Mr Andrew Ee, I accepted Mr Sngs evidence on this. This meant that as of 14 February 2000, when the defendants solicitors wrote to the solicitors for the head lessee, the defendants were unaware of the fresh payments made.

81. Granted that the defendants had not returned the payments after learning of the fresh deposits, nevertheless these payments (on 8 and 12 February 2000) of the arrears of rent by the head lessee, even if accepted as rent and not as mesne profits or damages, could not be sufficient in law to constitute a waiver of the re-entry and forfeiture. In my judgment, they came much too late after the issue and service of the writ of possession on the head tenant on 21 January 2000. See *Civil Service Co-operative Society v Mc Grigors Trustee* [1923] 2 Ch 347 and *Evans v. Enever* [1920] 2 K.B. 315, where no subsequent acts of the lessor could be relied upon to qualify the lessors irrevocable election to determine the lease by way of an action for recovery of possession.

82. Mr Ee relied on *Pierson v Harvey* (1885) 1 T.L.R. 430 where the tenant had also been paying rent directly into the landlords bank account. When the landlord discovered the breach of the covenant not to sublet, he commenced action to recover possession. Without giving notice to tenant, the landlord instructed the bank not accept further cheques from the tenant. The bank inadvertently allowed one cheque to be paid on 9 July 1884 for the rent due at the end of June 1884. The landlord was not aware of this until 21 October 1884, but he did not return the money. It was held that receiving rent under protest made no difference. The landlord had not given notice to tenant that he did not intend to receive the rent. Since he had received the rent, he had therefore waived the forfeiture.

83. I declined to follow *Pierson v Harvey* if it was meant to substantiate the proposition that payment (intended to be rent by the tenant) after service of the writ of possession on the tenant could waive the forfeiture relied on in the writ. In my view, the landlord is perfectly entitled, after the date of issue of the writ, to receive payment towards arrears of rent, mesne profits or damages as claimed in the writ without prejudicing their forfeiture of the lease consequent upon the notional re-entry by serving the writ. This was exactly what the defendants solicitors had stated in their letter dated 14 February 2000 as to the character with which the defendants would be accepting the payments from the head lessee. The landlords acts of receiving the payments after the date of issue of the writ, and *a fortiori* after the date of service of the writ, could not give rise to any waiver, the final election to forfeit having irrevocably taken place.

84. Although the previous agreed method of payment was banking directly into the defendants joint bank account by way of cheques, nevertheless the circumstances had changed so much and with the dispute now in the hands of solicitors, the most appropriate mode of payment in my view should have been to the defendants solicitors. Thus when the defendants went to the premises on 15 February 2000 to notify the subtenants to vacate, they acted *bona fide* in the belief that (a) both tenancies had been determined, (b) the head lessee had himself agreed to it, and (c) the rental arrears had continued to remain outstanding to the best of their knowledge at that time. Furthermore, they had found prospective tenants, who had agreed to lease the premises subject to the formal contract being finalised.

85. The head lessee could not revive those forfeited leases by payment of rental arrears or rents due in the way he did after the writ of possession had been issued and served. He could only apply to the court to grant him relief against forfeiture but only after fully settling all the arrears of rent.

**Was the physical re-entry peaceably done?**

86. After the defendants had re-entered on 15 February 2000 and regained possession of the premises on 16 February 2000, the secretary of the plaintiffs, Mr Nordin bin Mohd, wrote a letter dated 17 February 2000 to protest the re-entry, stating that Mr Toh Teng Seng had come with five other men to threaten and intimidate them. In spite of their protests, Mr Toh had pulled down the door-rail and locked up the premises, thereby preventing them and other stallholders from carrying on their business.

87. Coincidentally on the same day, the head lessees solicitors also filed an amended defence, which resiled from the position stated in their earlier defence filed on 3 February 2000. The significant part of the earlier defence - *which determination has taken place upon the issue of the Plaintiffs Writ in this present action* - was deleted. It would appear that both the head lessee and plaintiffs had decided that it was necessary to change tact and treat the leases as subsisting. In my view it was much too late after the head lessee had unequivocally intimated to the defendants that the leases had been determined and the defendants

had, vide their reply to the defence dated 11 February 2000 and their letter dated 14 February 2000, accepted that repudiatory determination, and had acted on it to their detriment.

88. What was perplexing was that the head lessee continued to maintain his counterclaim for the sum of $32,400 being the rental deposits held by the defendants and at the same time prayed for an order that the leases *be not forfeited but do continue to be in force and effect*. If the head lessee wanted to turn round and assert instead that the lease was to continue, then it would be inconsistent to mount a counterclaim for the refund of the rental deposit. Having allowed matters to run so far down the road, and with the re-entry/forfeiture having taken place and new tenants given possession of the premises for renovation works, the head lessee including his sublessees obviously could not be allowed unilaterally to take a different position now i.e. that there was no determination of the tenancies at all and hence, the re-entry was a trespass by the defendants.

89. In any event, there appeared to be a concerted action by the head lessee and his sublessees, both represented by the same set of solicitors, Andrew Ee & Co., to save the head leases. In my view, it was too late because lawful and peaceable entry had taken place. There could be no trespass in law. The only way to save the tenancies was for the head lessee or his sublessees to apply for relief against forfeiture. Until the court grants equitable relief, the owner is entitled to proceed with finding a replacement tenant, but he will run the risk of disengaging from any new tenancy entered into should the court subsequently order relief against forfeiture of the tenancies.

90. At the hearing, I asked Mr Nordin bin Mohd to explain how the defendants had threatened and intimated them. He testified that on 15 February 2000, the defendants entered the premises. Mr Toh Teng Seng told the stallholders including the plaintiffs to vacate the premises within 24 hours. Nr Nordin asked Mr Toh whether he had any papers, letters of authority or court documents. Mr Nordin said that Mr Toh acted arrogantly and shouted at them, telling them to talk to their lawyers. However, Mr Sng Soon Heng behaved well according to Mr Nordin. On the 16 February 2000, Mr Nordin witnessed the closure of the premises by Mr Toh and his men. Mr Nordin testified that they left at once because they felt embarrassed with the whole situation.

91. In any act of re-entry or re-possession by the landlord, the occupants may have to face some embarrassment. This is unavoidable. Clearly, the plaintiffs decided to move out themselves because of their own embarrassment, which Mr Nordin admitted in his evidence. There was no evidence that they were forced out of the premises by physical force or threats of violence of any kind by the defendants. Neither could I regard telling the occupiers to speak to their lawyers as a threat, even though Mr Toh might have told them to do so in a loud voice. Finally, Mr Nordin admitted on oath in court that the defendants in fact did not intimidate them or threaten them, contrary to what he had earlier stated in his letter.

92. According to Mr Sng Soon Heng, the occupiers were informed on 15 February 2000 that the head lessee wanted to surrender the premises. He told them to cease business and look for the head lessee. They then changed some of the locks and said that they would lock up the premises the following day. He also personally spoke to Mr Nordin and told him that the head lessee did not want the premises and that he wanted to take possession of the premises. When asked if they had any court order, Mr Sng replied that he did not have any. Mr Sng then mentioned that the head lessee had informed him that Mr Nordin himself was in arrears of rental for 4 months. Mr Nordin kept quiet. Mr Sng told Mr Nordin that he knew very well why the matter ended up that way. The contents of this conversation with Mr Nordin were not challenged.

93. From the totality of the evidence, I concluded that the re-entry was largely peaceful, and the plaintiffs left of their own accord due to their own embarrassment more than anything else. The head lessee was nowhere to be seen during the re-entry on 15 February 2000 and re-possession by the defendants on the 16 February 2000.

94. In my judgment, the fact that the defendants had commenced an action for recovery of possession did not preclude self-help remedies to recover the premises by themselves if done peaceably. It did not mean that they had to wait for judgment for possession before they could physically re-enter. If the subtenants and tenants refused to move out, then the defendants should not forcibly remove the tenants, unless they did not mind risking the penalties prescribed under the criminal law. A court judgment for possession would then be required to compel the subtenants and tenants to surrender possession. But if the subtenants, whether under protest or not, decide to move out upon being told to do so, the landlords would have succeeded in

recovering physical possession. Once possession is surrendered, the evicted tenants or subtenants cannot remove the landlords unless they succeed in obtaining relief against forfeiture. If the landlords decide to allow the tenants to regain possession and continue the lease, then it is superfluous to come to court to obtain relief against forfeiture.

95. I accepted the submission of Mr Singh that on account of the head lessee having stated unequivocally that the tenancy of the premises had been determined, the defendants proceeded to mitigate their loss by looking for new tenants. If indeed the plaintiffs suffered any loss as a result of the failure of the head tenant to pay the rent in the manner covenanted, which directly resulted in the landlords forfeiture of the two head leases, then they ought to look to the head tenant instead and not to the defendants.

**New Tenants**

96. Mr Ee on the other hand tried to portray the defendants as greedy landlords who chased out the plaintiffs after they found new tenants willing to pay a higher rent to them.

97. It could not be denied that the defendants were having difficulties collecting rent from the head lessee since November 1999. Their frustrations must have led them to file the writ on 13 December 1999 and finally to serve it on 21 January 2000. In these circumstances, it was perfectly reasonable for the defendants to look for new tenants to mitigate their loss and to minimise the period that their premises would be left vacant without a tenant. If anything at all, it showed their intention and determination to end the two leases. The defendants were clearly not interested in continuing their tenancies with the head lessee at all. No waiver could arise from their conduct. In any event, the correspondence with the new tenants clearly proved that the writ was in fact issued long before any new tenancy agreement was concluded. Any suggestion of ulterior motive on the part of the defendants was without basis.

98. I observed with some interest that the defendants solicitors were careful to stipulate in their letter dated 8 February 2000 to Rodyk & Davidson, the solicitors for the prospective tenants Mdm Fariday and Mr Amin Awall, that all necessary approvals from the Urban Redevelopment Authority (URA) and other relevant authorities that were required for the use of the premises as an eating house were to be applied for and obtained by their clients at their own cost and expense. From the exchange of letters, it would appear that both the defendants and their prospective tenants were keenly aware of the need to obtain approval from the URA for change of use of the two units on the 1st storey to that of eating house before the premises could be used as such.

99. When the prospective tenants agreed that they were prepared to rent the premises for 4 years from 19 February 2000 to 18 February 2004, they forwarded a cheque on 15 February 2000 for $90,000 comprising 6 months rental deposit to the defendants solicitors. The 1st months rent was free. The rent was $12,800 p.m. for the next 6 months and thereafter at $15,000 p.m.

100. On the same day i.e. 15 February 2000, the defendants went to the premises to inform the occupiers to vacate the premises. On the following day, 16 February 2000, the defendants exercised their right to re-possess the premises and locked up the premises. On or about the same day, the keys were handed over to the new tenants to allow them to commence renovation work.

101. After securing possession of the premises, the defendants solicitors wrote to Rodyk & Davidson on 17 February 2000 that the new tenancy was subject to the relevant authorities approval for change of use of the 1st storey units to an eating house. In the event that this was not approved, the intended tenancy would not be proceeded with. The defendants eventually agreed to undertake the application to the relevant authorities for the said change of use.

102. The new tenancy agreement with Mdm Fariday and Mr Amin Awall (trading under the name of "Black & White Grill Ltd.") was finally signed on 23 February 2000. The new tenancy agreement contained detailed provisions for disengagement in the event that the necessary approvals were not obtained. This showed that the defendants had acted prudently to obtain legal possession first before they proceeded to sign the new tenancy agreement subject to certain terms and necessary approvals. They were not prepared to break the law and allow their tenants to operate an unapproved and illegal eating house on their

premises.

103. The use of the premises as an eating house without planning approval of the URA will contravene the Planning Act (Cap.232). See section 14(7) read with Sections 3(1), 12, 13 and 14. The penalties are severe: a fine not exceeding $200,000, and in the case of a continuing offence, a further fine not exceeding $10,000 for every day or part thereof during which the offence continues.

104. In the process of applying for planning permission from the URA, the defendants discovered that neither the head lessee nor the plaintiffs had themselves any planning permission to operate the premises as an eating house. Not only was there a breach of the head lease and sublease, it was also in violation of the Planning Act. This will be of significance when considering whether the damages claimed by the plaintiffs had any merit.

**Damages**

105. Should I be wrong to conclude that there was no trespass, I would go on to hold that the plaintiffs had suffered no damage.

106. When the court in DC Suit No 5500 of 1999 granted the head lessee relief from forfeiture on 27 March 2000, and ordered the defendants to restore the premises to the head lessee, the defendants said they had done so promptly on 3 May 2000 by returning the keys, after their appeal was dismissed on 25 April 2000. But the head lessee rejected the keys until he was ordered by the court in High Court Suit No 315 of 2000 to retake possession of the premises. Since then, the plaintiffs had not resumed their food business on the premises. Yet they were claiming damages on the basis that they could have been continuing their food business till the end of their sublease in the year 2003.

107. If there was indeed any trespass, the assessment of damages must be confined to the loss including direct consequential loss caused by the defendants occupation for the short period of 2 months from 16 February 2000 to 3 May 2000. Loss too remote or not traceable to the defendants said occupation must be excluded.

**Restrictions on use of the premises in the head lease**

108. Clause 1 of the head lease of the 1st storey units specifically states *that the landlords let and the tenant takes all the two* ***shophouses***. These words imply that the premises were specifically rented out as shophouses and not as eating houses or coffee shops. But the plaintiffs were using the 1st storey units as an eating house or a caf contrary to the provisions of the head lease.

109. Clause 2 (e) of the head lease moreover stipulates that:

> 2. The tenant hereby agrees with the landlord as follows:
>
> (e) Not without first obtaining the landlords consent and all permissions and consents required by law to cause or permit at any time during the tenancy **any such material change in the user of the premises** as may be deemed to amount to development within the meaning of the Planning Act of Singapore or any statutory modification or re-enactment thereof;

URA Planning Approval

110. Mr Ayob Ali Bharoocha, the elected chairman of the plaintiffs, admitted that the committee running the plaintiffs was not aware as a fact that planning approval from URA was required before the premises could be operated as an eating house. Since they took over an existing eating house, they assumed that all they needed was a foodshop licence from the Ministry of Environment, which they had. Mr Singh showed him an application form for a licence under the Environment Public Health Act (Cap 95), where the applicant had to confirm that planning approval from Chief Planner, URA had been obtained or applied for. All Mr Ayob was prepared to say was that he remembered filling up a form when applying for the foodshop licence but he could not specifically remember whether he had made such a statement to the Ministry of Environment. Finally, he conceded that his food licence would be subject to URAs planning approval.

111. Mr Ayob admitted that the plaintiffs never applied for any planning approval from URA. However, since they took over an existing food business, there could be an existing URA planning approval for such use. What could not be disputed was that the grant of written permission from URA given to the head lessee (who was also Mr Ng Tiong Kiat at that time) for change of use of the 1st storey units (from a 1st storey shop at No 357 and a veterinary clinic at No 359) to an eating house was for a period only up to 18 January 1993, whereupon the written permission would lapse unless further written permission was granted.

112. URAs reply dated 25 February 2000 to a recent legal requisition clearly showed that the temporary permission for use of the said two units as an eating house had in fact lapsed on 18 January 1993 and there was no further written permission granted to the head lessee. I found therefore that neither the head lessee, nor the plaintiffs as the subtenants, had any URA approval to use the premises as an eating house after 18 January 1993. Further, the obligation to obtain all permissions or consents required by law for any material change in use of the premises had always been that of the head lessee under clause 2 (e) of the head lessees lease agreement with the former owners, and also under clause 2 (e) of the subtenants sublease agreement with the head lessee, which was assigned to the plaintiffs.

113. In fact, the defendants themselves applied on 1 March 2000 to the URA for change of use to an eating house. On 24 March 2000, the URA replied (see D1) refusing permission under Section 14 (4) of the Planning Act (Cap 232, 1998 Ed) for the premises on the 1st storey to be operated as an eating house because it would *affect the amenity of the residential area in terms of car parking and traffic*. The refusal had nothing to do with any internal layout or structural alterations of the food stalls or facilities at the eating house by the new tenant. Hence, any attempt by the plaintiffs to bolster their claim for damages on a supposition that the URA would extend their temporary permission granted earlier had there been no renovations, would not go very far. A second attempt in June 2000 to obtain permission was similarly rejected for the same reason (see D2). In the legal requisition from the URA (see D3), the premises had been zoned as *Residential with commercial at 1st storey only* in the 1998 Master Plan Zoning.

114. But the plaintiffs in their claim adduced evidence of damage and loss grounded almost entirely on the prohibited use of the 1st storey premises as an eating house. How the plaintiffs, as advised by his solicitors, could expect the court to grant an award of damages on that basis was something that I could not comprehend. It would be tantamount to a dissatisfied tenant, having used the premises as an illegal betting house, bringing forth a claim against the lessor for damages for trespass computed on the basis of a disruption to his illegal betting activities and the consequent loss of his lucrative profits. Obviously, a claim for damage of such nature based on an illegal mode of performance or an illegal business was not legitimate. A court will not assist a claimant to make good the shortfall of his ill-gotten profits by way of an award of damages or otherwise.

115. If indeed the plaintiffs were serious in thinking that they were entitled to operate at the 1st storey premises as an eating house, there would have been no reason for them to surrender their foodshop licence to the Ministry of Environment on 10 July 2000 after their head lessee managed to obtain an order of relief against forfeiture of the head leases as early as 27 March 2000. After the defendants appeal was dismissed on 25 April 2000, the defendants had promptly 8 days later, on 3 May 2000, forwarded the keys to the head lessees solicitors for onward transmission to their client. I found it most surprising that the plaintiffs should surrender their foodshop licence thereafter. It was obvious to me that the plaintiffs realised by now that they could not possibly carry on a coffee shop or a caf business at the premises legally without URA approval.

116. Unfortunately, there was further dispute between the head lessee and the defendants where the head lessee insisted on having the premises restored to their original unrenovated condition and refused to accept the keys, resulting in a string of suits and court applications that need not concern us here. The inability of the plaintiffs to re-enter after 2 May 2000 was therefore not caused by the defendants but by the head lessee in refusing to accept the keys returned by the defendants until the head lessee was compelled to do so by the court.

117. Whatever it was, it was absolutely clear that the URA was not going to grant any permission for the premises to be operated as an eating house. The entire commercial objective of the plaintiffs sublease of the premises had been frustrated. I could not see why the renovated and improved premises could no longer be run as an eating house (if not more profitably), without restoration to its former state, unless of course, there was no prospect of approval as an eating house by URA. If indeed the only way was to renovate the premises into a shophouse or office or some other useful commercial premises as allowed by URA, then the renovated eating house or the unrenovated Protax Caf would have to be demolished in either event. In converting the premises to a shophouse or an office or some other commercial premises that the URA might approve, the old food stalls must still be demolished and renovations must still be carried out. Hence, the investment sunk in by Protax in taking over the food stalls from the previous sublessee would not be recoverable in any event. I thus found that no damage whatsoever had resulted from the renovation of the coffee shop at the 1st storey premises.

118. In any event, the head lessee had in breach of clause 2 (e) of the lease agreement dated 1 Jun 1997 and in complete disregard of the provisions of the Planning Act allowed the 1st storey units to be used as an eating house, which he should not. The head lessee would have known that the earlier temporary URA approval had lapsed. He would know that he needed to apply for URA approval as he himself made the earlier application for change of use to an eating house, for which only approval for a limited period was granted. Therefore, there was in law sufficient basis for the defendants to exercise their right of re-entry and to determine the lease under clause 4 (a) of the lease due to the head lessees neglect to observe Clause 4 (e) of the lease, quite apart from the issue of non-payment of rental for the premises, although notice for such a breach must first be given under Section 18 of the Conveyancing and Law of Property Act before the right of re-entry or forfeiture pursuant to such a breach could be exercised.

**Plaintiffs claim for loss of or trespass to their goods**

119. In my view, the claim for loss of or trespass to chattels was unfounded.

120. Mdm Norsiah Binte Haji Abdul Samat testified that the plaintiffs had brought a lorry to remove their belongings. They also went to the 2nd storey unit to take their things away. I found corroboration from the fact that the plaintiffs could tender into court a book of records as evidence of their earnings from the various stalls purportedly run by them. If they had not removed their belongings and just left the premises, how could they produce those records? According to Mdm Norsiah, the other stallholders also removed their belongings. Certain chillers, coffee boilers, tables and chairs supplied on rental basis were taken back by the suppliers. She appeared to me to be forthright in her testimony. I believed her.

121. Clearly, the plaintiffs were not deprived of the opportunity to remove any belongings they wanted before the new tenants of the defendants started their renovations. I did not think the new tenants nor the defendants would be interested in any of the old and used items left behind. The former stalls were totally demolished. The premises were given a totally different and modern look.

122. When the premises were repossessed, the plaintiffs never once complained that they were deprived of their chattels and their equipment. There was no evidence to show that they tried to retrieve their chattels and equipment after the 16 February 2000 but were prevented by the new tenants or the defendants. The correspondence exhibited merely showed that they wanted to have the premises back.

123. According to Mr Admin Bin Awall, no items of any significant value were left behind by the plaintiffs.

124. From the evidence of Mr Toh Teng Seng, it appeared to me that the defendants were very reasonable and accommodating. When the roti-prata seller asked him for one week to remove his things from his room on the second storey, Mr Toh said that he telephoned the new tenants for their permission and they agreed. It did not seem to me that the defendants would have any interest in refusing anyone permission to remove their belongings. I imagine that it would have made it more difficult for the defendants to persuade these stallholders to vacate the premises had they done so. From the spontaneity of Mr Tohs evidence on how he went out of his way to try to help the roti-prata stallholder finish selling his roti-prata by eating roti-prata himself, getting his workers to do the same and offering to pay for it, it did not appear to me that he had acted harshly towards the stallholders. More likely than not, the stallholders were given sufficient opportunity to retrieve their possessions. Thereafter, they left voluntarily and the re-possession of the premises was peaceful. I could not see why the defendants would not accord the same courtesy to the defendants if indeed they had requested for more time to remove their belongings.

125. If the tenants or subtenants refused to take steps to remove their belongings after reasonable notice and opportunity had been given to them to do so, it would be too late now to complain that there was loss of or trespass to their goods by the landlord upon lawful re-entry and re-possession of the premises. Thereafter, the landlord or his agents would be entitled to remove these goods or discard them. The landlord cannot then be accused of committing trespass to the goods left behind in the premises.

126. I accepted Mr Tohs evidence that they had in fact locked up the premises in a very amicable way. I also accepted his evidence that they had informed the stallholders that the keys to the coffee-shop would be handed over to the contractors and if they wanted to remove anything, they could get the contractors to open the doors. I believed Mr Sngs evidence that they did not take any photo-copier, computer, equipment or any items of value from the premises. His evidence was that when they went upstairs on 16 February 2000, there was a mattress on the floor belonging to Mr Mohammad selling roti-prota. In another room were two chairs, a table and some newspapers on the floor. Downstairs were one or two refrigerators, kitchen utensils, two to three showcases, a few gas cylinders, bowls and plates and one signboard. He was not interested in them. If the owners wanted to take them, they could. In my view, it would be much easier for the contractor to do the renovations if the owners of the items were to remove them. Otherwise, the contractor would be saddled with their disposal. The allegation of the plaintiffs that they lost their goods was not substantiated by the evidence.

**Conclusion**

127. I concluded that the plaintiffs had removed the belongings that they wanted. Only items of inconsequential value or non-reusable items like the Protax Caf signboard were left behind. I did not find any evidence of unlawful taking, removing or damaging of goods belonging to the plaintiffs by the defendants or their agents acting at their behest. The plaintiffs failed to prove any legitimate damage. They also did not prove that they could have obtained URA approval to run the premises as an eating house. They did not show that they could have netted a profit if the premises were merely used as an ordinary office or a shophouse while having to pay the hefty $16,000 p.m. rent on their sublease to the head lessee. No evidence whatsoever in this direction was adduced. That burden rested with them, which they failed to discharge.

128. Accordingly, I dismissed the plaintiffs claim with costs to be taxed if not agreed.

Chan Seng Onn

Judicial Commissioner