Abe Isaac (Pte) Ltd v Marieta Montalba Pacudan and Another [2007] SGHC 46

Case Number : Suit 73/2006

Decision Date : 30 March 2007

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : Deborah Barker SC, Ang Keng Ling (KhattarWong) for the plaintiff; Prakash Nair, Sunil Singh Panoo (Dhillon & Partners) for the defendants

Parties : Abe Isaac (Pte) Ltd — Marieta Montalba Pacudan; Ong Choo Pang

30 March 2007 Judgment reserved.

Sundaresh Menon JC:

1 This case arises out of the lease of certain premises being two units at Orchard Towers ("the premises") which were used for the purpose of running a pub. The premises were leased by the plaintiff, Abe Isaac (Pte) Ltd ("AIPL"), to the 1st defendant, Marieta Montalba Pacudan. The 1st defendant's obligations were guaranteed by her husband, the 2nd defendant, Ong Choo Pang. At the end of the lease, there were a number of issues unresolved.

2 The plaintiff claimed that the premises had been left in an unacceptable condition and had not been reinstated or left in a state of good repair in accordance with the requirements of the lease. Further, the plaintiff claimed that certain items in an inventory list annexed to the lease had not been returned. The plaintiff claimed damages for these alleged breaches (hereinafter "the reinstatement claim" and "the inventory list claim" respectively). Further, the plaintiff claimed that the 1st defendant was in arrears of rent ("the arrears of rental claim"). The plaintiff also claimed that it was entitled to loss of rental in respect of the time it needed for carrying out the reinstatement works for a period of 15 days being the maximum permitted under the lease for this purpose (the "loss of rental claim"). Finally there were two other claims. The first was for the cost of installing some lights and audio equipment ("the equipment claim") and the other was for costs incurred as a result of a claim brought by the owner of another unit which had been damaged when water leaked from the premises while it had been leased to the 1st defendant ("the indemnity claim").

3 In a related claim the 1st defendant sought to recover the rental deposit of $130,000 which had been paid to the plaintiff.

Factual Background

4 The plaintiff renovated the premises and operated a pub there for a short period in late 1994 or early 1995. Sometime towards the end of 1995, the plaintiff leased the premises to a third party who operated a pub there under the name "Triple 7". That lease ended on 31 March 1997. On 15 April 1997 the plaintiff leased the premises to the 2nd defendant ("the 1997 lease"). The 2nd defendant operated a pub at the premises known as the "Pink Pussy Cat Fun Pub".

5 At the time of the 1997 lease, the 2nd defendant also took over various items of fittings and

furniture which were set out in an inventory list that was attached to the 1997 lease. I am satisfied that the inventory list was checked by the 2nd defendant or his employees at the commencement of the 1997 lease. Items that the 2nd defendant did not want were taken away and deleted from the inventory list. Certain other items were noted as having been removed by the 2nd defendant but subject to being returned to the premises at the end of the lease.

6 Sometime in 2001, the 2nd defendant renovated the premises and renamed the pub "The Green Mango". The Green Mango was a sole proprietorship registered in the name of the 1st defendant. It was not disputed that the 2nd defendant effected these renovations without seeking or obtaining the plaintiff's consent. The renovations were completed in July 2001, with nine months still to run on the 1997 lease. It seems clear that these were carried out contrary to the terms of the 1997 lease which prohibited alterations or additions to the premises without the prior written consent of the plaintiff.

7 The renovations coincided in time with the Pink Pussy Cat Fun Pub losing its public entertainment licence. Negotiations ensued between the 2nd defendant and Mr Abe Isaac who was the principal shareholder of the pub. This eventually culminated on 22 June 2002 with a lease agreement being entered into between the 1st defendant trading as The Green Mango and the plaintiff for a lease of the premises for a term of three years commencing 15 August 2001 and ending three years later on 14 August 2004 (the "2002 lease"). The 2nd defendant guaranteed the 1st defendant's obligations under the lease. This was in place of the 1997 lease.

8 By the time the 2002 lease was entered into, the premises had already been renovated and the 2nd defendant was operating The Green Mango Pub there. Accordingly, this was the state of the premises at the commencement of the lease. However, the inventory list for the 1997 lease was also attached to the 2002 lease even though it does not appear that any handover or check of the items listed there was carried out at the commencement of the latter lease.

9 On or about 14 July 2003, the plaintiff was informed that the name of the pub operated at the premises would be changed from "The Green Mango" to "Makati City". In fact, it was more than a change of name. Photographs were adduced which showed that the pub that was operated at the premises before and after the name change was significantly different. This again was not carried out with the consent of the plaintiff.

The lease

10 The present action was brought under the 2002 lease. The material terms of that lease included the following:

> 2.2.1 Upon the execution of this Lease, to deposit and maintain with the Landlord the sum of Dollars One Hundred and Fifty-Three Thousand ($153,000.00) as security for the due observance and performance by the Tenant of all and singular the several covenants conditions stipulations and agreements on the part of the Tenant herein contained which said deposit or any part thereof may be applied by the Landlord in or towards payment of moneys outstanding or for making good any breach of this Lease on the part of the Tenant but subject as aforesaid shall be refunded without interest to the Tenant (less any deductions by the Landlord) within one (1) month of the expiration of the term hereby created. Provided always that no part of the said deposit shall without the written consent of the Landlord be set-off by the Tenant against any

rents or other sum owing to the Landlord.

2.3 Costs and Expenses

To pay the stamp duty on this Lease (in duplicate) and to pay all legal fees (including the Landlord's solicitors' charges on a full indemnity basis), stamp duty and all other disbursements and out of pocket expenses incurred in connection with any assignment sub-letting surrender or other termination of this Lease otherwise than by effluxion of time or with any claim or legal proceedings which may be brought by the Landlord against the Tenant in the event of a breach of the Tenant in connection with this Lease.

2.5 Alterations and Additions

Not to make or permit to be made any works alterations or additions to or affecting the Demised Premises or any part thereof (including the drilling of any holes or affixing of nails or screws to any walls ceilings or floors) or the Landlord's furniture and fittings and decorations therein without having first obtained the prior written consent of the Landlord and if such consent is given the Tenant shall obtain necessary planning and any other consents pursuant to the provisions of any statute rule order regulations or bye-laws applicable thereto and comply with the conditions thereof and carry out at the Tenant's own cost and expense such works alterations or additions with such materials and in such manner as shall be prescribed by the Landlord and upon the expiration or sooner determination of the term hereby created and if required by the Landlord the Tenant shall at its own expense restore the Demised Premises and the Landlord's furniture and fittings to their original state and condition (fair wear and tear excepted). For the avoidance of doubt the convenants on the part of the Tenant hereinbefore contained shall extend to any purported works of repair or rectification carried out by or on behalf of the Tenant pursuant to clauses 2.6 or 2.7 of this Lease insofar as the same comprise an alteration or addition to or affecting the Demised Premises or any part thereof or the fixtures fittings or decoration therein.

2.6 Tenantable Repair

2.6.1 To keep in good and tenantable repair and condition the interior of the Demised Premises the flooring and interior plaster or other surface material or rendering on walls and ceilings doors windows partitions locks fastenings electric cables and wires sewerage and drain pipes air-conditioning system water heaters together with *all fixtures and fittings* therein including any alterations and additions authorised by the Landlord (except fair wear and tear and damage caused by fire other than where the insurance money is irrecoverable in consequence of any act or default of the Tenant or a permitted occupier) and forthwith to make good in a proper and workmanlike manner to the satisfaction of the Landlord any damage or breakage to any part of the Demised Premises or to the fixtures and fittings therein caused by the Tenant its employees, independent contractors agents invitees licensees or a permitted occupier.

2.6.2 To undertake at the Tenant's own cost and expense the regular maintenance and servicing and repair of all Landlord's fixtures and fittings affixed or fastened to the Demised Premises (including without limitation to the generality of the foregoing, all furniture and fittings set out in the attached Inventory List).

2.17 Indemnity

2.17.1 To indemnity and keep indemnified the Landlord from and against the following (save where the same arises through the negligence of the Landlord or the management corporation or

the Landlord's or the management corporation's employees):

2.17.2 all claims demands writs summonses action suits proceedings judgments orders decrees damages costs losses and expenses of any nature whatsoever which the Landlord may suffer or incur in connection with loss of life personal injury and/or damage to property arising from or out of any occurrences in upon or at the Demised Premises and/or the Building or the use or state of repair of the Demised Premises and/or the Building and/or the Landlord's furniture and fittings or any part or parts thereof or in any way caused by the negligence of the Tenant or by any of the Tenant's employees, independent contractors, agents, invitees or licensees or a permitted occupier; and …

2.21 Yield Up Demised Premises

At the expiration or sooner determination of the Lease term then in force to peaceably and quietly deliver up to the Landlord the Demised Premises with all *fixtures* (which expression shall where the context so permits include any alterations or additions or rectifications authorised by the landlord) unless required by the Landlord to be removed in good and tenantable repair and condition (fair wear and tear excepted) together with the keys to the Demised Premises and to all doors therein and if so required by the Landlord to remove from the Demised Premises all letterings internal partitions fixtures and installations of the Tenant or any part thereof as are specified by the Landlord. All damage done to the Demised Premises by such removal shall be made good by the Tenant. If the Tenant shall fail to deliver up the Demised Premises to the Landlord in accordance with the Tenant's covenants under this Lease the Landlord may carry out the repairs and other works to the Demised Premises and may recover from the Tenant the costs of such repairs and works together with rents and other amounts which the Landlord would have been entitled to receive from the Tenant had the period within which such repairs and works are effected by the Landlord been added to the term hereby created provided that such period to be added by the Landlord shall not exceed fifteen (15) days.

Preliminary Points

The evidence

11 The plaintiff called four witnesses to give evidence. Ms Leong Tend Doo worked as an Accounts/Administrative officer with the plaintiff. As a witness, she was emotive and rather defensive at times. She appeared to me to be quite plainly concerned with ensuring that her evidence would advance her employer's case. There was also a surprising twist in her evidence in connection with the sudden appearance of an invoice allegedly issued in the ordinary course of business by the plaintiff's contractor Mr Lim Moy Hai. I deal with this in greater detail later. While I do not reject Ms Leong's evidence in its entirety, I had misgivings over its credibility in certain important respects which I deal with later in this judgment.

12 Mr Tay Min Huat was another of the plaintiff's employees. He described himself as Mr Isaac's "runner". His evidence dealt primarily with the visits made to the premises from time to time, particularly in July and August 2004 when the tenancy under the 2002 lease was coming to an end. He also gave evidence on the inspection of the premises that was conducted at the end of the tenancy. He was examined at length as to some photographs taken of the premises at various times and on the differences between the layout of the pub when it was being operated as The Green Mango and subsequently as Makati City. His evidence was of limited use in my view.

13 Mr Mohammed Zamri bin Shariff was a freelance sound and light technician and general

handyman. He gave evidence concerning the instructions he received and carried out on behalf of the 2nd defendant at the expiry of the 2002 lease in connection with the removal of equipment.

14 The last of the plaintiff's witnesses was Mr Lim Moy Hai. Mr Lim was a contractor who provided services to Mr Isaac and various members of his family as well as to his business concerns. He described himself as the Isaac family's contractor. He gave evidence on certain quotations which he claimed to have issued and which was the basis for the quantification of the bulk of the plaintiff's claims. Mr Lim was an abysmal witness. He came across as untrustworthy in the most material respects as I shall explain in further detail a little later. I reject almost all of his evidence.

15 Those were the witnesses who gave evidence on behalf of the plaintiff. Mr Isaac himself, who dealt on behalf of the plaintiff with the 2nd defendant on most issues, was conspicuously absent. The defendants submitted that I should draw an adverse inference against the plaintiff on account of this. In the event it is not necessary for me to do so. However, I am bound to say that it occurred to me as unsatisfactory that Mr Isaac, who clearly was well-placed to provide material assistance on a number of issues, chose not to give evidence.

16 The defendants gave evidence on their behalf. As for the 1st defendant it became apparent when she took the stand that she had no personal knowledge of the material events. Her evidence was therefore of little if any assistance.

17 The 2nd defendant did take the stand and gave evidence on various issues. His evidence was of some assistance although in certain aspects his evidence was self-serving.

Burden of proof

18 The plaintiff had the burden of proving its case both as to liability as well as quantum. This was particularly relevant in the context of the reinstatement claims and the inventory list claim. To the extent the plaintiff failed to discharge its burden of proof it stood not to get the remedies it sought. Against that background, I turn to the substantive claims.

The inventory list claim

19 The plaintiff claimed a sum of $272,648.95 being the alleged cost of replacing items which were reflected in the inventory list attached to the lease but which were not returned at the end of the tenancy. There was no dispute that the inventory list had been attached to the 1997 lease. The evidence also established that at the start of that lease the parties had gone through the items shown on the list. To the extent items were not required by the 2nd defendant or were otherwise not accepted, these were struck through on the inventory list and countersigned by the 2nd defendant and a representative of the plaintiff. In some instances an annotation was made on the inventory list that the items had been or would be removed by the 2nd defendant but would be returned at the end of the lease. It was accepted by both Ms Leong and Mr Tay that at the time of the 1997 lease these items were already around two years old.

20 Mr Ong under cross-examination sought to distance himself somewhat from the fact that there had patently been a handover of these items. He asserted that he had not personally checked each of the items and ascertained if these were there or in working order when he took possession of the premises. In my judgement this was irrelevant even if true. The tenancy agreement had been signed and the items on the inventory list were acknowledged by or on behalf of the 2nd defendant.

There was no evidence of any attempt by the 2nd defendant to register any reservation as to the fact that he had taken possession of the items on the inventory list in good condition. In those circumstances, in my judgment, the 2nd defendant is taken to have accepted the items in good condition at the commencement of the 1997 lease.

21 As I have noted at [7] above, the 1997 lease was replaced by the 2002 lease. By the time of that lease, the premises had been substantially altered. The Pink Pussy Cat Fun Pub had given way to The Green Mango. However, the inventory list was then attached to the 2002 lease. The inventory list claim is made under the 2002 lease and relates to this inventory list. This list was identical to that which had been attached to the 1997 list save that the hand- or type-written annotations had been removed altogether so that what remained were the items that had been taken over by the 2nd defendant under the 1997 lease.

22 It was evident that there had been no physical handover or inspection in relation to these items. It was further accepted by Ms Leong and Mr Tay that in truth this was a reference to the very same items as had been taken over by the 2nd defendant in 1997. The following extract from Mr Tay's cross-examination neatly captures the point:

Q: Okay. You check certain items, for example, there's a Teac cassette deck, and you said it's there, correct?

A: Mm-hm.

Q: Was this the same item – let me rephrase that. Did you actually check to see that it was the branded Teac cassette deck, or did you just see whether there's a cassette deck?

A: In 2001, the – the contract with the – the – the inventory together they sign. … You see, we presume altogether just carry on. *The contract is just carry on because it's same person, is Mr Ong club. It's the same person. So he also agree, he sign everything there. We don't check the – the – the inventory again, everything again because he's agreed already.*

Q: Mr Tay, we went through all these items. Let's look at page 28.

A: Yah.

Q: Okay, earlier I had asked you about the Teac cassette deck –

A: Yah.

Q: -- and you said that it was there in a good condition. Now, may I ask you something? Do you actually check to see what brand was it?

A: No.

Q: No. so for you is, as long as there was a cassette deck, it must be the one that was given in 1997?

A: Yes.

23 It is clear therefore that the items listed on the inventory list was not a new set of items supplied to the tenant under the 2002 lease but the very same items that had been handed over in

1997. Accordingly, by the time the 2002 lease came to an end in August 2004, these items were almost 10 years old.

24 It bears mention that prior to the 2002 lease being executed, The Green Mango by its solicitors had sought certain amendments to the terms of the lease *inter alia* to reflect the fact that there had been complete renovations to the premises and that as the list was "obsolete [as all] the items are already defunct or worthless … your client is invited to take away all those items stated therein forthwith."

25 This met with a response from the plaintiff's solicitors that simply rejected the proposed amendments.

26 Mr Prakash Nair, who appeared for the defendants, suggested that these items were not even in existence at the time of the 2002 lease. Whether or not that is so, it is irrelevant in my view.

27 It is well established that a contract (including a lease) is to be construed taking due account of the factual matrix in which it was entered into: see *Reardon Smith Line Ltd v Yngvar Hansen Tangen* [1976] 1 WLR 989 cited with approval by the Court of Appeal in *Riduan bin Yusof v Khng Thian Huat (No 2)* [2005] 4 SLR 234 at [16]. In the present case, I am satisfied that having failed in the attempt to exclude the inventory list from the 2002 lease and having nonetheless entered into the 2002 lease, it was not open to the defendants to contend that the list in effect should be ignored.

28 On the other hand, it was clearly within the contemplation of both parties that the inventory list attached to the 2002 lease referred to the very same items that had been handed over to the 2nd defendant in 1997. Accordingly, the 1st defendant (as the tenant) had the obligation to return those items when the 2002 lease came to an end. In effect, the position in my view is that the 2nd defendant agreed to be responsible for the items taken over by the 1st defendant under the 1997 lease. This was not remarkable since the 2nd defendant was clearly seen as the moving force behind the business and in any case the defendants were married to each other.

29 However, the obligation to return the items was not an obligation to return these items in a new condition. There had to be due regard to the fact that the items in question would have been almost 10 years old by then and subject to deterioration and dilapidation for which the defendants are not to be held liable.

30 It was not disputed that many of the items in the inventory list were not returned by the defendants at the end of the 2002 lease. Although Mr Ong under cross-examination stated that the items were worthless, he accepted that even so he could have returned them to the plaintiff. The following exchange in the course of his cross-examination by Ms Deborah Barker SC, who appeared for the plaintiff, is illustrative:

Q: I put it to you, Mr Ong, that this is a fair figure as it would have been very difficult to get second-hand items to replace the inventory list which you did not return.

A: No. You look at the pricing is all wrong. Look at the drum set. It's not fair. I only take three pieces of it and you charge me 3,000, a complete set. There are many, many examples in that – on that list.

Q: And I would put it to you –

A: And some of the items are fair wear and tear, you can't repair anymore, what you want me to do?

Q: Should you not have returned the items to the plaintiff?

A: Yah, that was my mistake but when if – I mean, it's an assumption. He always – his answer is always "can you keep it in your warehouse and return me at the end of the tenancy agreement?" I had no warehouse. I can't afford to pay the rental.

31 There was also some suggestion by Ms Barker in the course of her cross-examination of Mr Ong that even damaged items would have a residual value.

32 The plaintiff's case on the pleadings in relation to the inventory list appeared to rest on the terms of the 2002 lease. In particular, there is no mention at all in the plaintiff's pleaded case of a letter of intent that was signed on 15 August 2001. However, in the closing submissions, the plaintiff in addressing the question of what the 1st defendant's obligations were under the 2002 lease referred first to the letter of intent dated 15 August 2001 in which it was stated that the tenant would "return all inventories as the items listed in the inventory schedule which were given to Pink Pussy Cat Fun Pub". The plaintiff then referred to Clauses 2.6.1, 2.6.2 and 2.21 of the 2002 lease. The plaintiff's submissions then referred to certain exchanges before concluding as follows:

> 61 Reading the *Letter of Intent together with the Green Mango Lease, the Plaintiffs submit that the 1st Defendant was to keep in good and tenantable repair all items on the Inventory List and to make good in a proper and workmanlike manner to the satisfaction of the Plaintiffs any damage or breakage thereto*, and to undertake at the 1st Defendant's own cost and expense the regular maintenance and servicing and repair of all the items on the Inventory List, and all items on the Inventory List were to be returned to the Plaintiffs upon the end of the term of the Green Mango Lease. The Plaintiffs submit also that the Defendants were well aware of these obligations.
>
> 62 The Letter of Intent dated 15 August 2001 specifically provided that all items of inventory "as listed in the inventory schedule which were given to Pink Pussycat Fun Pub" were to be returned on termination of the lease. Subsequently, the 1st Defendant had (with the 2nd Defendant's concurrence) signed the Green Mango Lease incorporating an inventory list reflecting all items given to Pink Pussycat Fun Pub (i.e. all items in the schedule to the Pink Pussycat lease, excluding those deleted by consent). ... [emphasis added]

33 It thus appeared that the plaintiff was placing reliance on the letter of intent even though this was not its pleaded case. In the responsive submissions that were filed on behalf of the plaintiff after it had received the defendants' submissions, the position evolved further. In responding to the defendants' submission that any obligation to return the items on the inventory was subject to an allowance for fair wear and tear, the plaintiff submitted as follows:

> 71 The Plaintiffs would point out that insofar as the Inventory List was concerned, the Defendants' obligation was "To return all inventories as the items listed in the Inventory Schedule which were given to Pink Pussycut Fun Pub". (**See the Letter of Intent dated 15 August 2001 at AB55 to 57**) The defendants had not covenanted to return all the items on the Inventory List, ***fair wear and tear excepted***. By the express terms of the Green Mango Lease, fair wear and tear is only applicable to the Defendants' covenant to reinstate the Premises. (The clauses pertaining to the 1st Defendant's obligations under the Green Mango Lease and the Letter of Intent dated 15 August 2001 are set out at paragraphs 55 to 58 of the Plaintiff's Closing

Submissions and the relevant portion of the 2nd Defendant's obligations under the Guarantee are set out at paragraph 64 of the Plaintiffs' Closing Submissions.)

72 For the above reasons, the Plaintiffs submit that fair wear and tear is not relevant to the Plaintiffs' claim for the cost of the items on the Inventory List. The Plaintiffs' pleaded claim is for the cost of replacing the missing items on the Inventory List with new items. However, if the Court is not inclined to allow the cost of replacing the items on the Inventory List with new items, the Plaintiffs have calculated the cost of the items after depreciation. With a period of depreciation of 4 years, the plaintiffs submit that the value of the missing items on the Inventory List would be S$131,782.48. With a period of depreciation of 8 years, the Plaintiffs submit that the value of the missing items on the Inventory List would be S$68,393.40. Even if we accept the Defendants' allegation that the missing items on the Inventory List would be 10 years old and apply a period of depreciation of 10 years, the Plaintiffs would be entitled to a sum of S$49,881.00. Accordingly, if the Court is not minded to award the sum claimed of S$272,648.95, the Plaintiffs submit that the alternative sums of S$131,782.48or S$68,393.40 or S$49,881.00 should be awarded. (**See Schedule 1 to the Plaintiffs' Closing Submissions and Schedule 3 attached hereto**)

34 It thus appeared from the latter submission that the plaintiff's claim in relation to the Inventory List items was founded only on the letter of intent. In my judgment, this was not a case put forward on the pleadings. Mr Nair did not expressly take the pleading point. However, I do have a number of reservations with proceeding on this basis including the following:

(a) No arguments were made as to the legal status of the letter of intent. The letter of intent was dated 15 August 2001 and it is stated to be "subject to Tenancy Agreement". In real terms, it was at best an agreement to grant a lease. The letter itself states that "if the parties fail to reach an agreement on Terms of the Tenancy Agreement within 24 hrs of this letter, this letter of intent will lapsed *(sic)*".

(b) As it turned out, the tenancy agreement was eventually signed on 22 July 2002. This is the document I have referred to as the 2002 lease. On the same day, the 2nd defendant executed the guarantee. This followed several exchanges of correspondence between the parties. The 2002 lease was evidently intended to supercede or displace the letter of intent since it covered the lease of the premises from 15 August 2001 almost a year prior to the execution of the 2002 lease. Further, the letter of intent is not mentioned at all.

(c) The guarantee referred only to the 2002 lease and there is nothing immediately to suggest that the 2nd defendant was guaranteeing any obligations of the 1st defendant arising under any other instrument.

(d) An attempt was made by the defendants to exclude any reference to the inventory list from the 2002 lease but this was refused. If indeed the letter of intent contained the operative obligation in relation to the inventory list items then the request as well as the response would seem to be meaningless.

35 In my view, these were all issues that should and could have been explored had the plaintiff's case on this basis been spelt out in the pleadings but it was not and hence these issues were not adequately addressed. For this reason, I am unwilling to make a finding on this basis: see *Multi-Pak Singapore Pte Ltd (In receivership) v Intraco Ltd* [1992] 2 SLR 793 at [22]-[24]. In any event, even if I am wrong on this, it would make no difference to the outcome for reasons I will set out shortly.

36 In its final submission, the plaintiff also submitted that Clauses 2.6.1 and 2.21 had no application to the inventory list items. Those are the clauses that contain a "fair wear and tear" exception. The plaintiff submitted that those clauses were relevant only to the reinstatement of the premises. It is true that those clauses refer to fixtures and fittings. It is also true that the items on the inventory list are not referred to in these clauses but in Clause 2.6.2 which speaks of "all *furniture* and fittings set out in the attached inventory list".

37 In construing the 2002 lease, one must consider the lease in its entirety and from this deduce what the real intention of the parties was. In this regard, I note that Clause 1 of the 2002 lease refers to the items in question as "the landlord's furniture and fittings as described in … the attached Inventory List". They are similarly described in Clause 2.6.2. The items on the inventory list included a range of items from furniture (such as cabinets, tables, chairs) to bar utensils, to musical instruments, to items such as lights and mirrors, to equipment such as cash registers and a chiller.

38 In my judgment, these items would not have come within Clauses 2.6.1 or 2.21 which speak of fixtures and fittings. These clauses in my view are directed primarily at fixtures which, in *Clarke Quay Pte Ltd v Tan Hun Ling (trading as Sin Lok Cuisine)* [2006] 3 SLR 626 at [32] was construed in relation to chattels to refer to such items as had become so affixed to the land as to become a part of it. Clause 2.6.2, on the other hand, requires the tenant to maintain, service and repair the items on the inventory list (among others). However, this obligation cannot extend to *renewing* items that were no longer serviceable or where the cost of maintenance or servicing exceeded the residual value of these items.

39 Although there is no specific provision that speak of the tenant's duty to deliver up these items at the end of the tenancy, there is no doubt that these items were the landlord's and there would have been no basis upon which the tenant could have retained these items as if they were his own.

40 To this extent, as I have noted at [30] above, it is unsurprising that Mr Ong accepted in the course of his cross-examination that he could and should have returned the items at the end of the lease. Many of the items were not returned at all and in this regard, I find that the defendants were in breach of this obligation.

41 However, the obligation was to return the items with due allowance for the fact that they were almost ten years old and subject to the repair obligation as I have set it out at [38] above. I return here briefly to what I have said at [35] that the result would be same in any event even if the plaintiff was to rely on the letter of intent. The relevant provision of the letter of intent simply states that the items in question are to be returned with no specification as to condition. At its highest, this would have required the 1st defendant to return the items with due regard to the fact that they were around ten years old and on any view this would not have imposed a higher obligation than set out here at [38-41].

42 In that light, I turn to the quantification of the plaintiff's claim. The only evidence put forward was a four-page document entitled "Part 1 Inventory List – Furniture and Fittings in Unit #02-36 and #02-46". The document listed each of the items set out in the inventory list, with columns showing the quantity recorded in the list, the quantity returned, the quantity missing, the unit price and the total cost.

43 Ms Leong in her affidavit of evidence-in-chief stated that this was a quotation from the contractor. However, under cross-examination contrary to this assertion, she stated:

(a) the figures had been worked out by Mr Isaac who gave her the figures and she then just added these up to derive the total (NE page 52 line 26 – page 54 line 7);

(b) the four-page document was not a quotation (NE page 54 lines 13 – 14);

(c) some of the figures could have been derived from invoices reflecting the cost of acquiring these items in 1994 although these invoices had not been disclosed and Ms Barker was apparently unaware of them (NE page 54 line 15 – page 55 line 1);

(d) she could not say which of the items were derived in this way from the 1994 invoices and which were just estimates (NE page 55 lines 2 – 5);

(e) she had personally typed out the document sometime in 2004 (NE page 55 lines 6 – 19);

(f) she did not consolidate the 1994 invoices that she had and which she used in preparing this document (NE page 55 line 31 to page 56 line 4);

(g) she did consolidate the 1994 invoices on Mr Isaac's instructions but could not remember how thick a stack this produced (NE page 56 lines 12 – 32); and

(h) the estimates were made by Mr Isaac but she had no idea on what basis he did this. Nor could she recall which of the items were quantified based on 1994 invoices and which on Mr Isaac's estimates (NE page 57 line 17 – page 58 line 1).

44 In my judgment, Ms Leong's evidence under cross-examination was of no probative value at all. Putting at its highest, it came down to this: the four-page document was not a quotation from the contractor; nor were the figures reflected there based on a quotation from the contractor but rather were derived either from the cost of acquiring some of the items in question brand new in 1994 or from estimates made by Mr Isaac on a basis she knew nothing about. The invoices themselves were not produced and in any event, she could not tell me which of the figures were derived from invoices and which were estimates by Mr Isaac. This was not direct evidence either of the actual cost of obtaining these items in 1994 (assuming this was relevant) or of the cost of replacing these items in 2004.

45 The next witness to give evidence on this issue was Mr Lim, the contractor. He stated:

(a) He prepared the four-page document in question. The owner (I understood this to mean Mr Isaac) called him and asked him to come up with a list of items that would be needed if Mr Isaac wanted to start a new club and Mr Lim then imagined what could be required and then set these out in the four-page document together with his estimate of the cost of doing so (NE page 296 line 10 – page 297 line 10);

(b) The document was prepared and generated in Mr Lim's office. He handwrote the contents of this document and this was typed by his clerk and was printed out and he then handed it to Mr Isaac (NE page 297 lines 11 – 28).

46 This was nothing short of a barefaced lie. The very structure of the document, its identical contents as compared to what was in the inventory list, the fact that there was a record of the number of items returned as compared to the number in the list all made it impossible to accept that Mr Lim had devised this document out of his own imagination to tell Mr Isaac just what would be needed to furnish a night club and had had it typed in his office for this purpose. There followed this

exchange:

Court: Can I just be sure, Mr Lim. You're saying that in relation to 196 – take a look – 197, 198 and 199, you're saying that that was all you were thinking what might be required for a club, and you made this list and then you put the estimated price in. is that what you're saying?

A: Yah.

Court: Okay.

Q: Now, Mr Lim, I put it to you that this was not prepared by you or your employee. Do you agree or disagree?

A: Don't agree.

47 I then directed Mr Nair to put to Mr Lim what Ms Leong had said to the effect that she had prepared this document. His evidence in response was garbled and incoherent and it was apparent to me that he realised that the lack of candour with which he had given his evidence had been exposed. I was satisfied that Mr Lim was not a truthful witness and I have no hesitation in rejecting this part of his evidence despite Ms Barker's attempts to repair some of the damage in re-examination.

48 There is a further twist to this tale. Ms Leong was recalled to the stand when she filed a supplementary affidavit in an attempt to repair various damaging aspects of Mr Lim's evidence some of which I deal with later. On this occasion, having been aware of the fiasco of Mr Lim's testimony on this issue, she stated:

(a) the four-page document was a quotation that came from Mr Lim as originally stated in her affidavit of evidence-in-chief (NE page 320 line 22 – page 321 line 3 and page 340 line 32 – page 342 line 29);

(b) the four-page document was in fact the inventory list with the value of missing items inserted (NE page 345 lines 5 – 6);

(c) where the prices could not be obtained from the 1994 invoices, Mr Lim would provide a price (NE page 346 lines 11 – 23); and

(d) This was conveyed by Mr Lim to Mr Isaac and then typed by Ms Leong (NE page 346 lines 25 – 30).

49 This was inconsistent with what Mr Lim testified under cross-examination as well as what Ms Leong herself had stated when she was first cross-examined as summarised at [43]. As the story grew with the telling it was apparent to me that there was no direct or credible evidence as to how the amount claimed by the plaintiff under this head was derived.

50 The burden of proof as to both liability as well as quantum is on the plaintiff. The fact that the plaintiff failed to adduce any credible evidence as to the damage it sustained was fatal to its case. There was no admissible explanation as to how the number put forward had been derived. Moreover, in her closing submissions, Ms Barker described this sum as follows:

> The cost of S$272,648.95 claimed by the plaintiffs as the cost of replacing items on the Inventory List *is accordingly based on the cost of purchasing new items to replace the said items ...* [emphasis added]

51 But this was not the effect of the evidence that was adduced before me. In my judgment, the plaintiff is not entitled to the sum claimed because:

(a) I do not accept that as a matter of law, the landlord would have been entitled to claim the cost of replacing the missing ten-year old items with new items having regard to the obligation incumbent on the tenant as set out at [38] to [41] above; and

(b) in truth there was no admissible or credible evidence as to how this number had been derived or that it was in fact the cost of replacing the missing items.

52 Ms Barker did advance an alternative in her closing arguments by suggesting the following:

132. Alternatively, in the event the Court is not minded to award the cost of replacing the missing items on the Inventory List with new items, the Plaintiffs submit that the Court should award the Plaintiffs the cost of the said items after depreciation. One reasonable method of depreciation is that used by the Australian tax authorities. The method used is to select a reasonable life-span for each item and to depreciate accordingly. This appears in the Taxation Ruling TR2006/15 applicable from 1 January 2007 issued by the Australian Government. A copy of the said Taxation Ruling is at PBA 161 to 290, Tab 7. The Plaintiffs submit that the guidelines in the said publication are reasonable guidelines which the Court may adopt in determining the value of the items on the Inventory List. Based on the said guidelines, the Plaintiffs have prepared 2 calculation of the cost of the missing items on the Inventory List adopting this method of depreciation and in accordance with the recommended life-spans of each of the items appearing in the said Taxation Ruling, one showing depreciation over a period of 8 years (as the Defendants allege that the items on the Inventory List would have been 8 years old by the end of the term of the Lease). And the other showing depreciation over a period of 4 years (as the 2nd Defendant claimed he disposed of the items by the time the Premises were renovated to Green Mango, the items could have been returned to the Plaintiffs in 2001, at which time the items would have been about 4 years old, the 2nd Defendant having used the items from 1997 to 2001). These calculations are annexed hereto in a bundle marked Schedule 1. The page references in the notes at the right hand side of the depreciated values in the Plaintiffs' calculations refer to the Taxation Ruling of the Australian Government TR2006/15.

133 After taking into account depreciation, the Plaintiffs submit that the value of the missing items on the Inventory List would be S$68,393.40 (if depreciated over a period of 8 years) or S$131,782.48 (if depreciated over a period of 4 years). The Plaintiffs therefore submit that they are entitled to claim either the sum of S$68,393.40 or S$131,782.48 if the Court is not minded to allow the Plaintiffs' claim for replacing the missing items on the Inventory List with new items.

53 This was neither pleaded, nor led in evidence nor argued and featured for the first time in closing submissions. Nor was any explanation offered as to why the depreciation method used by the Australian Tax Authorities should be relevant to me in this context. I therefore reject this in its entirety. In any event, as noted by Mr Nair, in the absence of an acceptable starting point, it is irrelevant to speak of depreciation.

54 In the premises, I find that there was no evidence as to the quantum of loss. Mr Nair submitted that in this context, I could find assistance in the judgment of L P Thean J (as he then was) in *L&M Airconditioning & Refrigeration (Pte) Ltd v SA Shee & Co (Pte) Ltd* [1993] 3 SLR 482 ("*L&M*") at [9]-[12]:

I turn to the question of quantum. There was clear evidence of outstanding defects as at the date of expiry of the defect liability period. In addition, there were other defects which arose after the expiry of the period. The building owner had engaged other contractors to make good all the defects the total amount incurred was $142,414.20 which they deducted from the moneys payable to the defendants under the main contract. However, included in the amount were costs and expenses for carrying out various items of works for which the plaintiffs were not liable under the sub-contract. No evidence was adduced to show to my satisfaction how the amount could and should properly be apportioned in respect of the defects for which the plaintiffs were liable and the basis of such apportionment. On the evidence it was not possible for me to assess and determine the actual costs or to make a proper estimate thereof for making these defects . I therefore awarded only nominal damages.

Similarly, in respect of the plaintiffs' liability for the delay, the defendants adduced no evidence to show the proper basis for apportioning the liquidated damages attributable to the delay on the part of the plaintiffs. Damage the defendants had suffered by reason of the plaintiffs' delay, but the question was what part of the liquidated damages should be borne by the plaintiffs. Chwee Meng Chong, the managing director of the defendant company, testified that the defendants had paid to the building owner liquidated damages in the sum of $548,000, calculated at the rate of $6,000 per day for 90 days – this was not disputed. He apportioned to the plaintiffs the sum of $48,000 as liquidated damages for eight days and this apportionment was based on the proportion by which the sub-contract value bore to the whole of the main contract value. That was not a rational apportionment and was unsupported by any authority. I rejected it. Having rejected it, I found that there was no basis on which I could properly apportion the amount and it would be too arbitrary for me to take a random sum and say that that was the amount for which the plaintiffs were liable under this head of the claim. I had no alternative but to award only nominal damages.

This case is quite different from those cases where damage has not been suffered and nominal damages are awarded as a token. *McGregor on Damages* (15th Ed) para 399 at page 250 states:

Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but not loss. In the present case the problem is simply one of proof, one not of absence of loss but of absence of evidence of the amount of loss.

I find this passage extremely apposite here.

55 This was followed by Judith Prakash J in *Permasteelisa Pacific Holdings Ltd v Hyundai Engineering and Construction Co Ltd* [2005] 2 SLR 270. In my judgment, this is the correct approach where a plaintiff who has proved a breach fails to prove its claimed damages. In the case before me, there was no bifurcation of the hearing on issues of quantum and liability. Such evidence as the plaintiff wished to adduce on quantum has been led. The fact that I found that evidence wholly unacceptable does not mean that there should be any further opportunity for further evidence to be led.

56 Ms Barker relied on the judgment of Belinda Ang Saw Ean J in *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2005] 4 SLR 417 where in a claim for equipment that had been lost or damaged an issue arose as to the quantification of the damages. The learned judge was of the view that the appropriate measure of damages in that case was to be based on market or resale value but there was no evidence before the court of the condition, age or value of the equipment.

57 However, one of the witnesses gave some evidence on one aspect of this and the learned judge made the following observation at [161]:

> These are thus far my views on the evidence of JSL and JHL in terms of proving their pleaded loss. But independent of that, upon Cameron's evidence there is Chiasson who was aware that the BOP stack that was lost was at least 20 years old and opined that if it was properly maintained over the 20-year period, it would probably be worth about US$1m. He explained that the BOP stack is made of components and went on to testify on the ready availability of second hand components for a BOP stack and then assembling the components to make a BOP stack at a total cost of US$1m. Cameron or several of its competitors could easily undertake the assembling. Mr Chandra contends that Chiasson is not an expert and cannot give expert opinion on the value of BOP at the time of the loss. Whilst Chiasson is not an expert, he is in the business and his testimony is of some assistance to put a monetary figure as representing the market value of what was lost and to which I am entitled to take on board. Where there is no precise evidence, I have to do the best I can with the little or limited evidence in order to do justice. Separately, there is no merit in Cameron's accusation that there has been failure to recover the BOP by way of mitigation. Accordingly, I award US$1m for the lost BOP. By awarding US$1m for the BOP, I see no internal inconsistencies there and my views on the state of the plaintiffs' evidence. As JSL and JHL have not proved the other various claims enumerated in [143] above and I so hold, I must disallow an award of compensatory damages. For those claims, JSL and JHL have succeeded to the extent of liability and they are entitled to recover nominal damages for infraction of their legal rights.

58 In my judgment, this case does not assist the plaintiff before me. The short point is that on one aspect of the claim, Ang J found some evidence which she considered credible and admissible and made a finding on that basis. On other aspects of the claims before her, Ang J rejected the evidence and awarded nominal damages. In the case before me, the evidence in question was that of Mr Lim and as I rejected his evidence for the reasons I have given, there is no admissible evidence before me at all. I accordingly award the plaintiff nominal damages of $200 in respect of the inventory list claim.

The reinstatement claim

59 The factual background to this claim is somewhat simpler. At the time of the commencement of the 2002 lease, the premises were already being used to operate The Green Mango Pub. Under Clause 2.21 of the 2002 lease, the 1st defendant was obliged at the end of the tenancy to yield up the premises in the state they were in at the beginning, fair wear and tear excepted. In my judgment, the relevant date for this purpose is the date of the commencement of the term of the lease, *ie*, 15 August 2001, although the lease itself was only formally executed in July 2002.

60 By the time the premises were handed over, a different pub was being operated at the premises, namely Makati City. The defendants accept that they did not return the premises in the same condition as at the start of the 2002 lease. In the premises, the defendants were in breach of this obligation.

61 The question once again becomes one of quantification of damages. Here, there is an exception for fair wear and tear. The plaintiff put forward a claim of $173,700. In support of this, two documents were put forward and this was again dealt with in the evidence of Ms Leong and Mr Lim.

62 The first document was a two-page document with no heading at all. The document listed certain physical areas each with a reference to a certain photograph number usually with a brief

description of the work to be done and then sets out an amount beside the item in question. I refer to this as the "Reinstatement Cost Document" or "RCD". There was nothing on the face of the document that directly linked it to the premises. The second document is a quotation issued by Mr Lim's company. It contains essentially the same information as is found in the two-page RCD but it is on the letterhead of Mr Lim's firm, Solid State Electronics & Construction. It purports to be dated 20 August 2004. For reasons which will become apparent shortly, I asked to examine the original and it then became apparent that the original document was dated 5 February 2005 and this date had been obscured by correction fluid and the revised date was handwritten over this. A portion of the reference number on the first page of the quotation was similarly changed from "05" to "04". The person behind these alterations omitted to make the corresponding change to the reference number of the quotation found on the second page of the document. I refer to the latter document as "the quotation". The quotation was introduced into the proceedings after the second day of the trial. Accordingly, when Ms Leong first gave evidence, it had not surfaced. Against this background, I turn to consider the evidence.

63 Ms Leong gave evidence only on the Reinstatement Cost Document when she first took the stand. On that occasion, she stated the following:

(a) The Reinstatement Cost Document was a quotation that came from the contractor, Mr Lim's company. Although it did not come on a letterhead, it was prepared and produced by the contractor (NE page 68 line 12 – 19);

(b) She was not involved in getting quotes for this work. But the document was given to her by Mr Isaac who told her it came from the contractor (NE page 68 line 31 – page 69 line 21);

(c) She was told by Mr Isaac that this was Mr Lim's quotation to reinstate the premises to its condition when it was operated as The Green Mango (NE page 67 line 30 – page 70 line 7). She was not in a position to say much more about the document (NE page 75 line 16 – 25); and

(d) Mr Isaac told her that according to Mr Lim, reinstatement could cost as much as wholly renovating the premises (NE page 76 line 27 – 31).

64 It will be apparent that nothing that Ms Leong said amounted to admissible evidence of the cost of reinstating the premises to the state it was in as the Green Mango. Whatever she knew appeared to have been told to her by Mr Isaac and so was not admissible evidence as to the truth of these statements. Her role was apparently confined to receiving the document from Mr Isaac.

65 On the following day the quotation was produced and when Mr Lim took the stand, he was examined on both these documents at some length. In the course of his testimony, he stated the following:

(a) In his direct evidence, he testified that the quotation was issued by him in response to Mr Isaac's request. He said on two occasions that it was issued in July 2004 but when Ms Barker drew his attention to the fact that it was dated 20 August 2004, he stated that it was issued on that date (NE page 269 line 7 – 26);

(b) The document itself bore a notation showing it had been faxed on 26 February 2005. He stated that the document was prepared in July 2004, issued in August 2004 and because the plaintiff could not find it, was faxed again on 26 February 2005 (NE page 269 line 29 – 31);

(c) He visited the premises on three occasions from late July to early August 2004 (NE

page 272 line 22);

(d) He was first shown some photographs and was asked how much it would cost to demolish what was already there and make the premises appear as they did in the photographs (NE page 275 line 15 – 24);

(e) He estimated it would cost "hundred – over thousand" dollars but this was not an accurate estimate because at that time he had not inspected the site yet (NE page 276 line 2 – 9);

(f) The RCD "could be" his quotation for reinstatement. It was typed by his clerk and the figures were provided by him based on the estimates he formed having looked at the photographs (NE page 276 line 12 – page 277 line 1);

(g) He could not remember when in 2004 the RCD was prepared; not even if it was the first or second half of the year. He did hand it to Mr Isaac sometime in 2004. The estimate contained in that document was based on the photographs he was shown (NE page 277 line 2 – 23);

(h) The RCD was prepared by him as a rough estimate based only on photographs and before he had even seen the site (NE page 278 line 1 – 18);

(i) He did subsequently visit the site but he did not give any estimate when Mr Isaac asked for it after he had been to the site (NE page 278 line 23 – 31);

(j) When he went to the site, he saw the premises were quite different from what was shown on the photographs. He then told Mr Isaac it was not possible to reinstate the premises as it appeared on the photographs without demolishing and rebuilding it (NE page 279 line 30 - page 280 line 5);

(k) He said when he went to the premises he expected it to be the same as was shown in the photographs and was surprised to find it was not, but he could not then explain why he thought that work costing $173,700 would have to be done (NE page 280 line 6 – 26);

(l) Mr Isaac told him he would wait until he had taken over the club before deciding what to do. He advised Mr Isaac that it was impossible to reinstate as it would cost more though just how much more would depend on the materials used. Just looking at the photographs it was not possible to tell what materials had been used (NE page 280 line 30 – page 283 line 5);

(m) When he estimated the comparative costs of reinstatement and new construction, he had no plans or drawings or concepts yet (NE 284 line 27 – page 285 line 7); and

(n) He was then examined on the quotation and in relation to this, he said this was prepared by his company. Again, he gave the figures to his clerk to type it (NE page 285 line 22 – 30).

67 There then followed this exchange:

Q: Okay. Okay, Mr Lim, Mr Lim, let's look at the front page, 1PB19.

A: Yes.

Q: Can you tell me what is this reference, SSE/Q/2005/04? You know what is this?

A: It's, er, our reference.

Q: Your reference? The last two digits, "/04", what does it mean?

A: Year 2004.

Q: So if this doc—and I notice on top the date is 20th August 2004, so if this document was prepared in the year 2004, your reference would be "/04", am I right?

A: Yes.

Q: Mr Lim, was this document prepared in the year 2004?

A: Should be.

Q: Can you turn to the second page? Can you look just below the—your symbol, Solid State, can you see "Pages 2 of 2, SE"—no sorry, "SSE/I/2005/05"?

A: Yes.

Q: Can you explain why it is "/05"?

A: I do not know. You have to ask my clerk.

68 It was apparent to me that the document bore certain handwritten alterations. I therefore asked for the original to be produced. It was produced by Ms Barker in chambers on 11 September 2006. On examining the document, it became apparent that the document had originally been dated 5 February 2005 and the material part of the reference number on page 1 was "05". These had been obscured by correction fluid and then altered by handwritten notations so that the date was shown as 20 August 2004 and the material part of the reference now was shown as "04". This was quite plainly the result of a deliberate and intentional act.

69 Returning to the cross examination, Mr Nair suggested to Mr Lim that the document was in fact created in 2005 and Mr Lim denied this. On my request for clarification, he clarified that the document was definitely prepared in 2004 (see NE page 288 line 16 – page 289 line 23).

70 In re-examination, Ms Barker sought to clarify why the document had two different reference numbers and in response, Mr Lim suggested it could be because of high staff turnover with two different clerks typing different pages (NE page 303 line 26 – page 304 line 10).

71 Mr Lim left a dismal impression on me. Indeed, he left such a poor impression on me that I called counsel into my chambers immediately after he had completed giving evidence and I told Ms Barker that I had been disturbed by Mr Lim's evidence and his apparent attitude towards the oath he had taken to give truthful evidence. I told Ms Barker that she should specifically address his credibility in submissions. Having considered the submissions, my views of Mr Lim and his evidence have not changed. I formed the impression that in his misguided attempts to help Mr Isaac and the plaintiff he was prepared to say anything without regard to the truth.

72 This was clearly demonstrated in relation to the evidence he gave on the quotation. I have no doubt at all that this was a document created in February 2005. This was shortly before these proceedings were commenced and presumably the quotation was prepared in an attempt to justify

the figure that had been claimed by way of reinstatement cost.

73 Mr Lim's evidence was irreconcilable with the objective facts when the original document was viewed. It is simply not true that the document was first created in July or August 2004 as he first maintained. Aside from this, his evidence as to how the quotation was prepared made no sense. In effect his evidence was that he had estimated the reinstatement cost as $173,700 based only on photographs, before he had been to the site and so without any idea of what it was that he was to reinstate. He said he expected the premises in fact to be as they appeared on the photographs but could not explain what the cost was then meant to cover. Nor did he know what the relevant materials were since this could not be told from the photographs done.

74 Ms Leong was re-called to the stand to try to explain the extraordinary turn of events concerning the quotation. In her supplementary affidavit of evidence-in-chief, the story grew some more in the telling. She now said that she had first been handed the RCD by Mr Isaac sometime in July/August 2004. As it was a quotation she filed this away. Although she had previously stated that she knew nothing else about this document (see [63] and [64] above), she now stated that Mr Isaac telephoned Mr Lim in her presence and pointed out that this document was not on the letterhead of Mr Lim's company. Mr Isaac requested that it be issued on the letterhead.

75 These requests were repeated on several occasions over the next few months when Mr Lim came to the office as well as in the course of telephone calls between him and Mr Isaac which apparently took place within Ms Leong's hearing. Mr Lim delayed sending the quotation because the plaintiff in turn had delayed paying him for some work. Just before Chinese New Year 2005, Mr Isaac instructed Ms Leong to make part payment to Mr Lim and also telephoned him to issue the quotation. This was sent in due course. Mr Isaac saw the date on the invoice and then called Mr Lim in Ms Leong's presence and told him that it should be dated "at the time it was originally prepared". According to Ms Leong, she knew this meant August 2004 because she heard Mr Isaac tell Mr Lim so. This was done and it was then sent again on 26 February 2005. It may be noted that much of this was at odds with what Mr Lim himself had said in his testimony.

76 She further testified that on 5 September 2006 after she had given evidence, Mr Isaac telephoned her and asked her to search for the invoice and it was then tendered in court. Under cross-examination, she could not satisfactorily explain why Mr Isaac had thought it necessary at the time to get the quotation on a letterhead as it had already been decided that the work in question would not be done (see NE page 312 line 25 – 313 line 19). She also could not satisfactorily explain how she could fail to recall the existence of the quotation when she had been asked when giving evidence the first time if there was a quotation on a letterhead and had said there wasn't (NE page 339 line 3 – 18).

77 I found the further evidence given by Ms Leong contrived. It seemed to me to be an attempt to dig the plaintiff out of the hole they found themselves in after Mr Lim's evidence and it was not convincing in the least. If this further evidence were true, then it is flatly inconsistent with what Mr Lim had said in several respects. And if it were true, then it is inexplicable why Mr Lim did not himself offer the same explanations. He could not have forgotten the many conversations that allegedly took place throughout the latter half of 2004 when he was being chased to produce a quotation on his letterhead. He could not have forgotten that he had held off acceding to this request because of payment issues he had with the plaintiff or Mr Isaac. He could not have forgotten that he finally acceded to the request because of the part payment allegedly made around Chinese New Year. He could not have forgotten that the date had been changed at Mr Isaac's request.

78 In my judgment, there was no question of Mr Lim having forgotten any of these things. He

had not said any of these things because they were simply not true. This is also borne out by the fact that none of these things had been stated when Ms Leong took the stand the first time. I do not believe that she too could have simply forgotten the many telephone conversations and meetings which she later claimed to have witnessed or heard.

79 There is no dispute that the quotation was a document put together in 2005. I do not accept Ms Leong's evidence as to how it came into being for the reasons I have stated. Even less do I accept Mr Lim's original story that it was created in the ordinary course of business in August 2004 and that it was sent again in February 2005 because the plaintiff had misplaced it. Even Ms Leong rejected this version. I therefore reject the quotation as well as the testimony given by Ms Leong and by Mr Lim in connection with that document in its entirety.

80 I turn then to the RCD. Ms Leong could give no direct evidence about this other than to say it was handed to her. Mr Lim said in effect this was a rough estimate prepared by him based on a set of photographs only, with no plans, with no idea of the materials to be used, without having been to the site and without any understanding of the existing state of the premises. In truth, putting it at its highest, this was an opinion offered by Mr Lim of the reinstatement cost based upon wholly imperfect information. I reject this evidence. It was not clear on what basis Mr Lim's opinion would have been admissible to begin with.

81 If that objection could be overcome, for the reasons I have already stated, I did not find Mr Lim to be someone whose opinion I could conscientiously have given any weight to. There was no explanation of the basis upon which he had arrived at these figures and it was therefore quite impossible for anyone to have formed a meaningful assessment of the reliability of his views. Accordingly, I reject this evidence of the quantification of the plaintiff's reinstatement claim.

82 The plaintiff did not adduce any other evidence on this issue. It chose not to call an expert, a surveyor for instance, even though it could have done so.

83 It follows for the same reasons given in relation to the inventory list at [50] to [58] above that the plaintiff is entitled only to nominal damages of $200 for this claim.

The arrears of rental claim

84 The defendants ultimately conceded the plaintiff's claim for the arrears of rental amounting to $88,445.72. I accordingly find for the plaintiff in respect of this claim.

The loss of rental claim

85 Clause 2.21 of the 2002 lease provides in the material part as follows:

> If the Tenant shall fail to deliver up the Demised Premises to the Landlord in accordance with the Tenant's covenants under this Lease, the Landlord may carry out the repairs and other works to the Demised Premises and may recover from the Tenant the costs of such repairs and works together with rents and other amounts which the Landlord would have been entitled to receive from the Tenant had the period within which such repairs and works are effected by the Landlord been added to the term hereby created provided that such period to be added by the Landlord shall not exceed fifteen (15) days.

86 In my judgment, it is clear from this that where the premises are not delivered up in accordance with the requirements of the lease and it is necessary to carry out works and repairs to

rectify this, the landlord is entitled to receive rentals for the period that such works would have been carried out subject to the maximum allowance of 15 days. In my judgment it is not material that the landlord decides to do something other than purely to reinstate the premises although the period for which the tenant would be liable is that period that would have been required for reinstatement only and always subject to a maximum of 15 days.

87 The plaintiff claims an allowance for the period of 15 days. The defendants dispute this on the basis that there was no real evidence to support the plaintiff's case that it would have taken that long. In my judgment, the defendants are wrong on this.

88 Mr Lim stated that if the general condition was good at the time of the takeover, it would have taken around a week to ten days to complete the reinstatement work and this was not seriously challenged by Mr Nair. It should further be noted that the landlord would have been entitled to a reasonable period to find and engage a suitable contractor who would in turn have been entitled to a reasonable time to mobilise. Further, both Mr Lim and Mr Ong testified that to fit out a pub from scratch would take around two months. In my judgment, given that there had already been a renovation which saw The Green Mango give way to Makati City and given that the premises were to be restored to the condition it was in as The Green Mango it would not have been unreasonable for the necessary work to have taken at least 15 days.

89 I accordingly find for plaintiff in respect of this claim in the sum of $27,443.84.

The equipment claim

90 The plaintiff claimed a sum of $10,000 in respect of the "cost of re-installing disco lighting and audio equipment". Two invoices each for a sum of $5,000 were produced from an entity known as Acoustics Visions. The first was said to be for the supply of trunking, speaker brackets and mounting accessories for audio. The second was said to be for the supply of trunking, installation of lighting mounting accessories, manpower installation and for manpower to stand by to check the sound for the opening of the new pub.

91 Mr Nair submitted that there was no evidence to link these expenses to any particular damage or breach by the defendants. Although Mr Zamri gave evidence that sound equipment and lighting had been removed, there was no evidence that what was removed in fact belonged to the plaintiff. Mr Nair further submitted that there was no evidence of what work precisely had been done by Acoustics Visions.

92 In reply, Ms Barker submitted that these costs were incurred not for the fittings themselves but for the cost of re-installing the lighting and sound equipment for the plaintiff when they renovated the premises and which was necessitated by the defendants' removal of such items at the end of the lease.

93 In my judgment, the defendants are right on this. It was incumbent on the plaintiff to show that the costs they incurred were no more than necessary to remedy any breach by the defendants. The maker of these documents did not come to prove their contents and explain exactly what work was covered. It was evident on the face of the documents that at least in part (if not entirely) the work related to the renovations that were done in conjunction with the plaintiff's new pub at the premises. It was not clear if the extent of such work as may have been done exceeded what would have been required to remedy any breach by the defendants. Thus, it was not proved that the trunking or the brackets or the mounting accessories that were supplied were all directly related to the defendants' breach and in any event were no more than necessary. It was not even clear that

brackets and mounting accessories had been removed by the defendants in the first place.

94 I therefore disallow this head of claim.

The indemnity claim

95 There is no dispute that just prior to the end of 2002 lease some hacking work was done at the premises which caused damage and water leakage in the subjacent unit. The owners of that unit later sued Mr Isaac in his personal capacity as the owner of the premises. Ms Leong testified that Mr Isaac had leased the premises to the plaintiff and that the sum of $5,000 paid to his solicitors (who were also the plaintiff's solicitors) to defend the action (which was eventually settled) was paid by the plaintiff.

96 The plaintiff's pleaded case is that the proceedings were brought against the plaintiff and that the plaintiff incurred costs and expenses amounting to $5,000 defending that suit.

97 This was factually incorrect. The writ was brought against Mr Isaac personally and the solicitors' invoice was addressed to him personally. Ms Leong testified that the amount was paid by the plaintiff but there was no evidence that the plaintiff was obliged or required to make this payment under its lease with Mr Isaac. Nor was it pleaded or asserted that the plaintiff was acting as agent for Mr Isaac in seeking this recovery.

98 The material portion of Clause 2.17.2 provides:

> To indemnify and keep indemnified the Landlord from and against the following …
>
> all claims demands writs summonses action suits proceedings judgments orders decrees damages costs losses and expenses of any nature whatsoever which the Landlord may suffer or incur in connection with … damage to property arising from or out of any occurrences in upon or at the Demised Premises …

99 In my judgment, the material part of this clause stipulates that the indemnity applies to cover losses or expenses which the landlord may suffer or incur. As long as it has incurred the expenses in good faith, the expense may be recovered under the indemnity. In my judgment on the circumstances proved, the plaintiff was not acting unreasonably in incurring this expense and it is therefore within the ambit of the indemnity.

100 I therefore find for the plaintiff on this claim in the sum of $5,000.

Conclusion and costs

101 In the premises, I find for the plaintiff in the following amounts:

(a)	Inventory list claim	$200
(b)	Reinstatement claim	$200
(c)	Arrears of rental claim	$88,445.72
(d)	Loss of rental claim	$27,443.84
(e)	Indemnity claim	$5,000

Total	**$121,289.56**

102 As against this, the 1st defendant had furnished a security deposit amounting to $130,000. The net result of my findings is that after making allowance for the amounts due to the plaintiff, the 1st defendant is entitled to a sum of $8,710.44. In my judgment, no interest is payable on this amount because the deposit is placed against the due performance by the tenant of its obligations under the tenancy and it is evident from my holdings that most of the amount was properly held. Further, Clause 2.2.1 contemplates that the deposit is to be returned without interest.

103 The amount of $8,710.44 is to be refunded to the 1st defendant by the plaintiff and I accordingly enter judgment for this amount against the plaintiff. The plaintiff's claims against the defendants are dismissed.

104 This leaves the question of costs. The plaintiff sought indemnity costs and relied upon Clause 2.3 of the 2002 lease which entitles the landlord to costs on a full indemnity basis in any proceedings brought against the tenant in the event of a breach. In my judgment, this is misconceived because while the existence of such a provision would be a basis upon which the court could exercise its discretion on costs if the plaintiff had been substantially successful, I do not see that it obliges the court to award the plaintiff its costs on an indemnity basis regardless of the outcome of case or the conduct of the parties: see eg *Hong Leong Finance Ltd v Lee Siang Wah and Another* [1993] 3 SLR 857. I do not think the outcome that I have reached could be described as a substantially successful one for the plaintiff. I am also mindful of the fact that the plaintiff had sought to make out its case on the basis of evidence which I found to be false in significant respects.

105 On the other hand, the fact is that the 1st defendant was in material breach of a number of her obligations under the agreement and it was on account of a lack of proof that the damages recoverable by the plaintiff were substantially reduced. Furthermore, there is no gainsaying that the 1st defendant was in clear breach of her obligations in not making payment of the arrears of rental and in insisting that these be set off against the security deposit when this was plainly contrary to the terms of the lease.

106 In all the circumstances, I consider that the appropriate disposal on costs is that each party is to bear its own costs.

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