Seah Chwee Lim practising under the name and style of Seah Chwee Lim & Associates v Scan Electronics (Singapore) Pte Ltd
[2000] SGCA 30

Case Number	: CA 195 & 197/1999, Suit 600038/1998
Decision Date	: 30 June 2000
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: Steven Chong SC/Lionel Tan/Gavin Khoo (Rajah & Tann) for the appellant in Civil Appeal No 195 of 1999 and the respondent in Civil Appeal No 197 of 1999; Michael Hwang SC/Christopher Daniel/Daren Shiau (Allen & Gledhill) for the respondents in Civil Appeal No 195 of 1999 and the appellants in Civil Appeal No 197 of 1999
Parties	: Seah Chwee Lim practising under the name and style of Seah Chwee Lim & Associates — Scan Electronics (Singapore) Pte Ltd

JUDGMENT:

Cur Adv Vult

1. These two appeals arose from the claim of Scan Electronics (S) Pte Ltd, the plaintiffs, against Seah Chwee Lim, the defendant, for damages for professional negligence. In the court below, the defendant admitted the negligence complained of but maintained that his negligence did not cause any loss to the plaintiffs or alternatively that the plaintiffs had contributed to the loss. The trial judge found that the defendant's negligence did cause the plaintiffs to suffer some losses and that there was no contributory negligence on the part of the plaintiffs. He awarded the plaintiffs only certain items of the loss claimed by them. Against his decision both the plaintiffs and the defendant appealed, and we propose to deal with both of their appeals together in this judgment. For convenience, we shall continue to refer to the parties as the plaintiffs and the defendant respectively.

The facts

2. In April 1993, two of the directors of the plaintiffs, Azam Ali and Chow Kwok Seng ('Chow'), were interested in purchasing the property, No. 13 Jalan Besar ('the property'). They caused a search to be made at the Registry of Deeds and found that there was executed a deed of appointment of trustees in relation to the property. Azam Ali then got in touch with one of the trustees, Syed Salim Alhadad bin Syed Ahmad Alhadad ('Syed Salim'), who referred him to his nephew Syed Jafaralsadeq bin Abdul Kadir ('Jafar'). Azam Ali met Jafar and negotiated with the latter for the purchase of the property. Eventually they agreed on a purchase price of $550,000. Arising from the negotiations, the plaintiffs on 29 May 1993 were granted an option to purchase the property by Syed Ibrahim bin Abdul Kadir Alhadad, Syed Hashim bin Abdul Kadir Alhadad and Syed Salim (collectively referred to as 'the Vendors'), acting as the personal representatives of the estate of Syed Abdulkadir bin Ahmad Alhadad ('Syed Abdulkadir').

3. On 31 May 1993, Azam Ali and Chow saw the defendant and showed him the option they had obtained and instructed him to act for the plaintiffs in the intended purchase of the property. The defendant did not appear to have taken any step in relation to the option. The plaintiffs exercised the option on 22 June 1993, and only thenceforth the defendant carried out a search on the property. He was not satisfied with the result of the search, as it did not show that the title to the property was vested in the estate of Syed Abdulkadir. On the following day, he wrote to G Balan Nair & Co ('Balan Nair'), who were the solicitors for the Vendors, stating his finding that there was a break in the chain of title and requested Balan Nair to explain how the Vendors as the personal representatives of the estate of Syed Abdulkadir were able to sell the property. On 30 June 1993, Balan Nair replied without however dealing specifically with this query. They informed the defendant that the sale was subject to the Vendors obtaining an order of court under s 35(2) of the Conveyancing and Law of Property Act (Cap 61). However, the defendant was

not satisfied with the reply, and he further wrote to Balan Nair on 1 July 1993 stating, inter alia, that the court order would not cure the 'bad root' of title and, even if granted, might not be good for the purpose, and that the Vendors might not be the actual trustees of the proprietor of the property. He requested Balan Nair to forward the draft affidavits of the trustees in support of the application for the order so that he could ascertain their rights in seeking the order of court for the sale of the property to the plaintiffs.

4. A copy of the defendant's letter was sent to the plaintiffs. On receipt, Azam Ali forwarded a copy to Jafar. Jafar replied directly to Azam Ali, assuring him thus:

> We have done title search on the said property and you do not have to worry about anything, as the sale shall be sanction [sic] by the Court. Please be informed that we are selling the said property as the legal owner and you and your lawyer should not worry unnecessarily about who is the equitable owner, that is our family internal matter with the Basalamah families.
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> After all the sale proceed [sic] shall be held in Trust Account with our lawyers after the sale.

5. Azam Ali subsequently spoke to the defendant on 6 July 1993 and the latter made an attendance note of the conversation as follows:

> 1. Azam Ali said the trustees have said they have powers to sell. The rest are internal matter. All beneficiaries will sign.
>
> 2. Ali said trustees offended. I told him I had no intention to do so. It is entirely up to trustees to satisfy themselves of the status. I owed Purchaser a duty.
>
> …

6. The defendant, nevertheless, continued to seek clarification on the Vendor's title. He wrote to Balan Nair on 13 July 1993 asking for a copy of the draft affidavit in support of the Vendor's pending application under s 35(2) of the Conveyancing and Law of Property Act. Balan Nair declined this request on 4 August 1993 stating that he would only provide the defendant with a copy of the court order. The defendant then spoke to Azam Ali again on 6 August 1993 and thereafter made the following note:

> 1. Ali said he has read the fax of 4.8.93 by G. Balan Nair & Co.
>
> 2. I told him since the Vendor's solicitors are adamant about it, we don't have a choice but to hope for the best.
>
> 3. There is no contractual term for us to peruse the affidavit first. Ali said 'ok' - let it be.
>
> Don't offend the Vendors or their solicitors.

7. In the meanwhile, the defendant received copies of the title deeds on 14 July 1993. On perusing the deeds, he realised that there was a break in the title of the Vendors to the property and that the plaintiffs on completion would not receive a proper title. Nonetheless, he did not bring this to the attention of Azam Ali or the other directors of the plaintiffs.

8. Eventually, Balan Nair forwarded a copy of the order of court dated 27 August 1993 and the affidavit in support of the application for the order. The affidavit did not provide any answer as to how the Vendors became entitled to sell the property. Nevertheless, the defendant took no further action on receiving these documents, even though he had earlier taken the view that the court order would not cure the 'bad root' of title. He did not advise the plaintiffs' directors not to complete the purchase on the ground that the Vendors had no title to the property. In the result, the plaintiffs went ahead and completed the purchase of the property on 15 October 1993.

9. Approximately two to three months later, the plaintiffs applied to Tat Lee Bank Ltd ('the Bank') for a loan on the security of a mortgage of the property. Shook Lin & Bok ('SLB') were instructed to act for the Bank as well as the plaintiffs in the proposed mortgage, and Mr Lim Choo Eng ('Mr Lim') of SLB was the solicitor in charge of the matter. After making a search, Mr Lim wrote to the defendant on 31 January 1994, stating that the Vendors did not have the capacity to sell the property, as they had not obtained the grant of the letters of administration de bonis non to the estate of Mohamed bin Ali bin Faraj Basalamah ('the Basalamah estate') and that the deed of assignment of the property was ineffectual to transfer the property to the plaintiffs. However, no copy of this letter was sent to the plaintiffs and they were not apprised of the problem. Only in or around February 1994, when Azam Ali called Mr Lim enquiring about the progress of the loan application, were the plaintiffs informed of the problem with regard to the title arising from the absence of letters of administration de bonis non. Following from that conversation, Chow approached the defendant who promised to resolve the matter with Mr Lim. However, there was no solution to the problem, and the application for the loan was eventually refused by the Bank on or about 27 December 1994.

10. In the meanwhile, the plaintiffs had very much earlier instructed Palakrishnan & Partners ('P & P") to recover possession of the property from the tenants. In fact soon after the completion of the purchase, on 29 October 1993, P & P made an application on behalf of the plaintiffs to the Tenants Compensation Board under the Controlled Premises (Special Provisions) Act (Cap 60) to recover such possession. A date for the hearing of the application was fixed for 22 April 1994. However, before the hearing, the plaintiffs reached a settlement with the two tenants of the property and the application was subsequently withdrawn. On the basis of the settlement, compensations amounting to a total sum of $54,500 were paid on 28 and 30 June 1994.

11. P & P were also instructed to look into the problem relating to the title of the property. After having conducted a title search on the property and a probate search, they wrote to Balan Nair on 30 June 1994:

> We note that your clients are not the individuals whom the Grant of Letters of Administration of the Estate of [Basalamah], the owner of the property, had been granted. Our searches show no trace, as well, of any Grant of Letters of Administration De Bonis Non having been granted to your clients, so as to permit them to sell the property to our clients.
>
> Please let us know whether your clients have taken any steps to obtain a Grant of Letters of Administration de Bonis Non so that our client's title to the property may be rectified. If so, please let us know the Probate No. of the application, and if not, please advise your clients to rectify the problem forthwith.

12. Balan Nair replied that they had since closed the file and were no longer acting for the Vendors and suggested that the query should be made to them direct. P & P instead wrote to the defendant on 28 July 1994, informing him that, in their view, the title to the property had not passed to the plaintiffs as the Vendors were not the administrators of the Basalamah estate, the owner of the property. They requested for a satisfactory explanation from the defendant. The defendant replied on 1 August and 19 October 1994 maintaining that so long as the court order stood it could not be said that the Vendors had no power to sell the property to the plaintiffs and to pass a good title effectively to the plaintiffs, and concluded thus:

> 3. We conclude that the title as it stands in the records registry of the Registry of Titles and Deeds is a good title, in spite of the fact that the personal representatives of the Estate of Mohamed Bin Ali Bin Faraj Basalamah did not have a Grant of Letters of Administration De Bonis Non. Justice Lai Kew Chai must have taken judicial notice of that when he granted the Order on 27 Aug 93.

P & P were not persuaded, and they wrote to the Vendors on 27 October 1994 repeating their views on the deficiency in the Vendors' title to the property. They requested the latter to provide either a copy of any grant of letters of administration de bonis non to the Basalamah estate or other satisfactory evidence of their power to sell the property.

13. The Vendors then instructed Netto Tan & S Magin who wrote to P & P on 12 November 1994 stating that their clients had instructed them to apply for a vesting order, and that they were in the process of preparing the application. They further stated, in the alternative, that the Vendors offered to repay all the monies paid by the plaintiffs, without interest, in exchange for the

plaintiffs taking all the necessary steps to divest themselves of whatever interest they had acquired in the property. However, no application was filed by Netto Tan & S Margin and the plaintiffs did not accept the alternative offer.

14. It appeared that on 21 December 1994, Peter Pang & Co initiated proceedings in Originating Summons No. 787 of 1993 on behalf of the Vendors for an order that, further to the order dated 27 August 1993, the property be vested in the applicants as trustees. P & P became aware of the application and wrote to Peter Pang & Co on 25 January 1995, stating that it was imperative that the Vendors highlight all the objections to title made by SLB and themselves at the hearing fixed for 27 January 1995, and reiterating that the Vendors could not have given good title without a grant of letters of administration de bonis non.

15. In the meanwhile, on 16 September 1994, the letters of administration de bonis non to the Basalamah estate were in fact granted to one Syed Ali Redha Alsagoff ('Syed Alsagoff'), who was the attorney of Shaik Ahmad bin Mohamed bin Ali Basalamah and Shaik Hassan bin Mohamed bin Ali Basalamah, the sons and beneficiaries of the estate. The letters of administration were issued on 22 November 1994 and registered against the property on 26 January 1995.

16. On 2 March 1995, the plaintiffs instructed P & P to seek an opinion on their title to the property from Mr H M Dyne ('Mr Dyne'), a senior conveyancing lawyer. Mr Dyne gave his opinion on 17 March 1995 which was to the effect that (a) the order dated 27 August 1993 was clearly a nullity as the Vendors had misrepresented their status in the ex-parte application, (b) that a grant of letters of administration de bonis non was required to continue with the administration of the Estate, and (c) that no title had passed to the plaintiffs. Mr Dyne also advised in general terms some steps or actions the plaintiffs should take with a view to seeking a proper title to the property. However, no step or action appeared to have been taken by the plaintiffs.

17. About two months later, on 8 May 1995, Syed Alsagoff instituted proceedings in Originating Summons No 437 of 1995 ('O S No. 437 of 1995') against the Vendors and plaintiffs seeking to set aside the sale. The application was heard before Warren Khoo J, and he held that the Vendors had no capacity, merely as trustees of Syed Abdulkadir's estate, to sell the property in the absence of a grant of letters of administration de bonis non over the Basalamah estate in their favour and accordingly he set aside the sale. He also rejected the defences of acquiescence and laches raised by the plaintiffs: see *Syed Ali Redha Alsagoff (administrator of the estate of Mohamed bin Ali, deceased) v Syed Salim Alhadad* [1996] 3 SLR 410. Against that decision, the plaintiffs appealed to the Court of Appeal and the appeal was dismissed: *Scan Electronics (S) Pte Ltd v Syed Ali Redha Alsagoff and Ors* [1997] 3 SLR 13.

18. Following the dismissal of their appeal, the plaintiffs instituted the present action against the defendant claiming damages for breach of contract and/or negligence in failing to advise them that the Vendors had no capacity to convey the property and that no title would pass to them on completion of the sale. There was no claim for the refund of the purchase price paid for the property, as that had been refunded to them by the time the action commenced.

The decision below

19. Before the trial judge, the defendant admitted that he was negligent in omitting to advise the plaintiffs that the Vendors had no capacity to sell the property as they did not have the grant of letters of administration de bonis non to the Basalamah estate. The learned judge found that there was no contributory negligence on the part of the plaintiffs and allowed, inter alia, the following:

> (a) damages arising from the loss of the property to be assessed by the registrar, the measure of such loss being the increase in value of the property without vacant possession as at 17 July 1996 over the contract price, together with interest thereon at the rate of 6 % from the date of the issue of the writ to the date of judgment;
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> (b) two thirds of the costs of the action.

The learned judge rejected the following claims of the plaintiffs:

> (a) the sum of $54,500 paid to the tenants of the property as compensation for delivering of vacant possession of the property;
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> (b) the sum of $5,416.39 being the costs paid to P & P in respect of the application to the Tenants Compensation Board;
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> (c) the solicitor and client costs of the plaintiffs in defending the claim in O S No 437 of 1995 and the party and party costs incurred in the two applications in those proceedings and the costs for attending taxation of the party and party costs in O S No 437 of 1995.

The appeals

20. The plaintiffs appeal against the dismissal of the above claims, and the defendant appeals against the trial judge's finding that there was no contributory negligence on the part of the plaintiffs and against the basis of assessment of general damages as awarded by the learned judge. The issues before us are essentially the following, namely: (a) whether there was any contributory negligence on the part of the plaintiffs; (b) the measure of damages for assessment before the registrar; (c) whether the plaintiffs are entitled to recover the amounts of compensation paid to the tenants of the property for delivery of vacant possession; (d) whether the plaintiffs are entitled to recover the costs paid to their solicitors in respect of the application to the Tenants Compensation Board; and (e) whether the plaintiffs are entitled to recover their costs in O S No. 437 of 1995.

Contributory negligence

21. On the issue of contributory negligence, counsel for the defendant relies essentially on what the plaintiffs' director, Azam Ali, did with regard to the defendant's attempt or effort to conduct investigation on the property. It was in evidence that, on 6 July and 4 August 1993, after the defendant had written to the Vendors' solicitors raising questions on the Vendors' title to the property, Azam Ali spoke to the defendant and, among other things, instructed the defendant not to offend the Vendors. Counsel contends that this instruction, considered in the proper context, was tantamount to an interference in the defendant's investigation of title, and thus impeded his investigation. By this instruction Azam Ali had caused the defendant to cease or ease up on the investigation. It is said that the defendant understood the instruction to mean not to probe further into the Vendors' title to the property. It is also said that Azam Ali in fact admonished him for investigating title, because Azam Ali himself was satisfied with the Vendors' explanations.

22. The learned judge found that there was no undue pressure exerted on defendant by Azam Ali in the latter's instruction not to offend the Vendors, and even if there were, that did not relieve the defendant from his duty to investigate and advise the plaintiffs accordingly. Neither were the defendant's investigations on title thereby impeded. The learned judge said at 66-68 of his judgement:

> 66. … Azam Ali told him that trustees said they had powers to sell. Azam Ali did not tell him to accept the trustees' assertion and to stop his own investigations. The tone of the note was that the defendant did not intend to offend the trustees, and even if they were offended, he still owed a duty to the plaintiffs to investigate. In fact he did not stop his investigations and continued his queries with Balan Nair on 13 July.
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> 67. The second attendance note (see paragraph 13) only mentioned the draft affidavit, with no reference to any instructions to cease investigations … Neither attendance note recorded that the

vendors had threatened to call off the sale, nor that the purchase must be completed regardless of the state of the title.

68. When a client instructs his lawyer not to offend a vendor, it does not mean that he is relieved of his duty to investigate. A purchaser has a legitimate interest that a transaction proceeds smoothly without any avoidable friction. The solicitor should then conduct his investigations with greater tact and sensitivity, but he should not stop carrying out his duties.

23. The learned judge was plainly right, and we agree with him entirely. First, the attendance notes made by the defendant in respect of the conversations between him and Azam Ali on 6 July and 4 August 1993 did not reveal any indication that Azam Ali did not require the defendant to carry out the investigations which he had initiated. Based on the notes, it appeared to us that, so far as relevant, substantially what Azam Ali did was to inform him that the trustees were offended by his enquiry as to their title to the property and to request him not to offend them. Such a request certainly was not, and could not in any sense be construed by the defendant to be, an instruction by Azam Ali that the defendant should not carry out his investigation on the title to the property which he was obliged to do. Secondly, the defendant's record showed that Azam Ali had authorised him to obtain copies of all the title deeds to the property. There was no note recorded by the defendant which shows either expressly or by necessary implication that Azam Ali had given him any instruction to the effect that he was to desist from making any investigation on the title or other important aspects of the property, which was central to his duty acting as the solicitor for the purchaser of a property.

24. It is significant that after the conversation with Azam Ali on 6 July 1993, the defendant continued with his enquiry of the proposed application for the order under s 35(2) of the Conveyancing and the Law of Property Act and the efficacy of the proposed order of court and hence the capacity and power of the Vendors to sell. In particular, he sought a copy of the affidavit in support of the application for the order. If indeed there were instructions from Azam Ali to accept the Vendors' assurance concerning the title to the property, there would be no reason for repeating the same request to view the affidavit in support. We are thus reinforced in our view that the defendant never considered Azam Ali's instruction to mean that he should cease or suspend his investigations on the property.

25. It is difficult to understand how the instructions given by Azam Ali could amount to an interference, such that it impeded the duty of the defendant to investigate the property and to advise his clients. What the defendant appears to suggest is that he was impeded in discharging his duties because Azam Ali was anxious to complete the purchase and thus was unconcerned about the technicalities as to the title of the property. In response, we hasten to say this. If that were true, it would make his duty to advise the plaintiffs of the consequences all the more imperative. Where a solicitor relies on his client's express instructions as a defence to a claim for negligence, he must show that he has provided adequate advice to his client before acting on the client's instructions: *Jackson & Powell on Professional Negligence* (1997) at para 4-93. In this case, of course, the plaintiffs were anxious to acquire the property. However, they were entitled to expect that, even in the face of such anxiety, the defendant would conduct the investigations on the property adequately as a solicitor and advise them accordingly. In our judgment, there was no contributory negligence on the part of the plaintiffs.

26. The defendant was not deprived of any relevant information because of the conduct of the plaintiffs allegedly preventing him from rendering this advice. He received copies of the affidavit and title deeds from Balan Nair. From the letters he wrote to Balan Nair, it seems to us that at all material times he formed the view that the plaintiffs on completion would not be getting any title or interest in the property and the problem would not be resolved by the court order which was being sought by the Vendors. Unfortunately, notwithstanding this, he failed to advise the plaintiffs against the purchase of the property.

Damages

27. In the court below, the plaintiffs claimed, inter alia, damages as follows:

(i) loss of the property and the wasted expenses in purchasing the same including (but not limited to) the difference between the cost of the alternative premises and the cost of the property (after making necessary adjustments).

(ii) alternatively, the loss of opportunity to purchase a property similar to the Property for the same or a similar price.

The trial judge dealt with this claim at 74 and 75 of his judgment as follows:

74. … How is the damages for this loss to be measured? The plaintiffs submitted that it should be the difference between the original contract price and the market price when the purchase failed, and cited *Stinchcombe & Coope Ltd v Addison Cooper, Jesson & Co* [1971] 115 SJ 368 as authority. The defendant contended that it should be the difference between the contract price and the market price at February 1994 when Azam Ali first heard of the title defect in the title from Mr Lim because the plaintiffs have mitigated their loss and should have taken steps to acquire alternative premises immediately.

75. I accept the plaintiffs' position. When Mr Lim informed Azam Ali of the problem with the title, that could have been rectified if the necessary grant de bonis non was obtained. The difference between the positions of the plaintiffs and the defendant is the factual issue when the purchase failed, and I find that it failed when it was set aside.

Later the learned judge concluded thus at 80:

80. I find that the damages should be the increase in the value of the property without vacant possession as at 17 July 1996 over the contract price. As there was no evidence adduced on this, it shall be assessed by the registrar.

28. The arguments before us, as were before the learned judge, are directed at the correct date to be taken for the purpose of assessing the measure of damages. Very briefly, counsel for the defendant argues that 17 July 1996, as determined by the learned judge, is not correct as the adoption of that date is inconsistent with the learned judge's decision that it was unreasonable for the plaintiffs to defend O S 437 of 1995, and hence they could not recover the costs incurred in that action. The plaintiffs were not justified in deferring seeking alternative premises until the judgment was delivered. The purchase failed *ab initio*, because the Vendors had no title to the property, and damages ought to be assessed as at the date of completion. As the plaintiffs eventually recovered the purchase price, there was no further assessable loss. Alternatively, it is argued that the appropriate date for the assessment should be either 31 January 1994 or 12 November 1994. With regard to the former, that was the date when Mr Lim of SLB wrote to the defendant stating, among other things, that the Vendors had no capacity to sell the property and that the title to the property had not passed to the plaintiffs. There was no evidence that the sale could have been rectified then by a grant of letters of administration de bonis non in favour of the Vendors. As for the latter date, the plaintiffs ought reasonably to have accepted the offer of refund of the purchase price from the Vendors, since they had by then received separate advice from both Mr Lim and P & P that the Vendors had no title to the property. Finally, in either of these cases, it was not possible to rectify the defect, as firstly, there was no evidence that the Vendors could have obtained a grant of letters of administration de bonis non, and secondly, after 16 September 1994, that became impossible as Syed Alsagoff had by then obtained the grant.

29. On the other hand, counsel for the plaintiffs contends that the date of assessment was correctly identified by the learned judge as 17 July 1996. First, the court order dated 27 August 1993, which sanctioned the sale of the property by the Vendors, remained valid and binding and equally the conveyance was valid until it was set aside. Secondly, even if the sale and purchase failed *ab initio*, the court can choose an alternative date of assessment, where it is just to do so. The date of 31 January 1994 was not appropriate, as Mr Lim never specifically advised the plaintiffs that they had received no title. The alternative date of 12 November 1994 was also not appropriate for two reasons. First, the offer of refund from the Vendors failed to compensate the

plaintiffs for all their losses. Secondly, it was reasonable for the plaintiffs to have pursued the course of seeking to rectify the defect in title. Mr Dyne's opinion suggested this, and the alternative of accepting the failure of the sale was in the circumstances unreasonably drastic at that stage. Until the plaintiffs were served with the summons in O S 437 of 1995, there was no evidence that they were aware that a grant of letters of administration de bonis non had been obtained. Consequently, it was reasonable for the plaintiffs to await the outcome of O S 437 of 1995.

30. It seems to us that the learned judge in making the award of damages as well as counsel for both parties in their submissions before us proceeded on the basis that damages for the loss of the property are recoverable as a result of the defendant's negligence. With respect, we think that there is fundamental error implicit in such award and submissions. The question which should be addressed first is whether such loss was caused by the negligence of the defendant. In our opinion, the defendant's negligence was his failure to advise the plaintiffs that the Vendors had no title to the property, as the property was part of the Basalamah estate and the Vendors, not having obtained the grant of letters of administration de bonis non, were not the administrators of the estate. If the defendant had fully discharged his professional duty to the plaintiffs, the latter would have been advised that the Vendors had no title to the property which they purported to convey to the plaintiffs with the consequence that the plaintiffs would have declined to complete the purchase and would have rescinded the sale and purchase agreement, which they were fully entitled to do. In the circumstances, it cannot be said that the defendant's negligence caused the plaintiffs to lose the property which they would otherwise have purchased.

31. We therefore drew counsel's attention to this error and have since received fresh written submissions from them. Counsel for the defendant seems to suggest that this point has been dealt with in his arguments before us. This we find is not so. In his arguments before us and in particular in his written skeletal arguments, counsel referred to this point peripherally and in a different context. In his fresh written submissions, counsel has not added anything material to what we have said and it is not necessary to deal with his written submissions further.

32. We now turn to the written submissions advanced by counsel for the plaintiffs. Counsel accepts that if the defendant had advised the plaintiffs properly, the plaintiffs would have taken steps to rescind the contract. However, counsel contends that it does not follow that the plaintiffs would not have purchased the property. At that time, it was open to the plaintiffs to request Jafar to cause or procure the Vendors to approach the beneficiaries with a view to obtaining the necessary consents or authorisations for the Vendors to apply for the grant of letters of administration de bonis non to the Basalamah estate, and if the beneficiaries agreed, the Vendors would be in a position to regularise their title to the property and enter into a fresh contract with the plaintiffs. Alternatively, the plaintiffs could have asked Jafar to procure and arrange for a direct negotiation between the plaintiffs and the beneficiaries to take place with a view to enabling the plaintiffs to purchase the property. There was no reason why the beneficiaries would not agree to the sale of the property to the plaintiffs at the price at which the Vendors had agreed, as that was the prevailing market price at that time.

33. We find that these arguments have no evidential basis in support. There was not a shred of evidence that the beneficiaries to the Basalamah estate were accessible to Jafar or the Vendors or were amenable to the Vendors taking out the letters of administration de bonis non. None of the Vendors were entitled in their own right to apply for and take out letters of administration de bonis non to the Basalamah estate. There was no possibility at all of the plaintiffs acquiring any title to the property from the Vendors. Nor was there any evidence that the plaintiffs could have approached the beneficiaries and entered into direct negotiations with them. In our opinion, these arguments are purely speculative and are devoid of any merit whatsoever.

34. There is a third argument advanced by counsel, and that is if the beneficiaries refused to sell the property to the plaintiffs, the latter would have immediately gone into the market to purchase an alternative property in the Jalan Besar area. We propose to deal with this argument shortly when we consider the alternative claim by the plaintiffs for the loss of opportunity of buying an alternative property.

35. This is not a case where the defendant was engaged by the plaintiffs to rectify a defect in the title to the property, and owing to his negligence he had failed to secure a good title for the plaintiffs. In our judgment, the negligence of the defendant in relation to the sale and purchase of the property did not cause the plaintiffs to lose the property and the plaintiffs were not

entitled to damages for the loss of the property. The dominant and indeed the sole cause for this loss is the Vendors' lack of title to the property they contracted to sell to the plaintiffs.

36. We find support for this view from the Canadian case of *Messineo v Beale* (1978) 86 DLR (3d) 713, a decision of the Ontario Court of Appeal. There, a solicitor searched the title to a property which was being purchased by his client but failed to discover that the vendor had no title to a significant part of what the deed purported to convey. The plaintiff purchaser argued that the proper measure of damages was the value of the portion of the property they had failed to obtain. This was rejected by Arnup JA who affirmed the trial judge's award of nominal damages. He said at p 716:

> In my view it is obvious that the defendant's breach of duty was not the cause of the plaintiff's getting no title to Murch's Point [the relevant portion of property]. The vendor had no title to Murch's Point, and could give none. Nothing the defendant could have done would have changed the situation.
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> It is to be observed that if the defendant had discovered, before closing, that the [vendor] had no title to Murch's Point, it would have been his duty to communicate the fact at once to his clients. Their options then would have been to refuse to close, to close and take title to what [the vendor] could convey, or try and negotiate once more for a lower price…

Zuber JA, another member of the Court, said at p 718:

> The negligence of the defendant did not cause the plaintiffs to lose Murch's Point. Since Finley, the vendor in the subject transaction never had title to Murch's Point it was never within the grasp of the plaintiffs, and hence could not have been lost. The defendant's negligence simply caused the plaintiffs to complete a transaction that they otherwise would have avoided. Therefore, it is the responsibility of the defendant to compensate the plaintiffs for the loss suffered as a result of entering this transaction; but as the reasons of Arnup, J.A., demonstrate, there was in fact no loss.

37. Zuber JA, in a subsequent case, *Kienzle v Stringer* (1981) 130 DLR (3d) 272 at 275, explained the decision in *Messineo v Beale* in the following terms:

> In my respectful opinion, *Messineo v. Beale* decides only that the defendant did not cause the plaintiff any damage. Since the vendor did not own Murch's Point, the defendant's solicitor did not cause its loss. The solicitor caused the plaintiff to complete a transaction that he would otherwise have avoided but no loss resulted from this. The plaintiff could have resold as soon as he discovered that he had not obtained Murch's Point and would have suffered no loss at all. It would have been far different if the vendor had owned Murch's Point and the solicitor had omitted the property from the deed or in some other way had caused the plaintiff to lose the property. In that case, the plaintiff's damage would have been the value of the missing property despite the fact that the value of what he had received was greater than the purchase price.

In that case, the defendant solicitor who acted for the plaintiff in the purchase of a farm was negligent in failing to include all the owners of the property in the conveyance. One year after the purchase, the plaintiff attempted to sell the farm, and agreed to purchase another property conditional on the sale of his farm. In anticipation of the sale, he gave up the lease of the adjoining farm. Only then was it discovered that there was a defect in his title to the farm. As a result, the sale fell through and the plaintiff was unable to purchase the other property. He then had to buy out the interest of the other owner of the farm who was not joined in the conveyance, and lost the profit for operating the farm because he had given up the lease of the adjoining farm. At first instance, he recovered only the price he paid for purchasing the owner's interest and the fees paid to the defendant. He appealed and Court of Appeal allowed his claim for the loss of the farming profit but limited it to one year. He was, however, not allowed the profit which he would have made had he purchased the other property. The court considered this loss as too remote.

38. Both these cases were followed in another Canadian case, *Clarke v Milford* (1987) 38 DLR (4th) 139, which was a decision of the Court of Appeal of Nova Scotia. There, the property under the will of a testator was devised to his son. After the death of the testator, the mother on behalf of the son, who was then still an infant, sold the property to the plaintiff. The defendant solicitor acted for both the plaintiff and the mother in the transaction, which was apparently completed and the entire purchase price was paid. All the parties assumed that the necessary steps were taken in completing the transaction. The client subsequently discovered that no deed was executed by the mother and no order of court approving the sale was obtained. No title therefore was conveyed to the client. The property was in the meanwhile dealt with by the son who had attained the age of majority. The client sued the solicitor for damages for negligence. Before the Court of Appeal one of the questions raised was the damages to which the client was entitled. The court following the decision in *Messineo v Beale* (supra) held that the solicitor could not have done anything more than to advise the client of the inability of the mother to convey the property, and that the client was entitled only to the actual loss he had suffered which included the purchase price paid, the fees paid to the solicitor and the taxes paid for the property, and that no damages were awarded for the loss of the property.

39. Reverting to the case at hand, the plaintiffs rely on *Stinchcombe & Cooper Ltd v Addison, Cooper, Jesson & Co* (1971) 115 SJ 368. We do not find this case of any assistance. There, the solicitors were negligent in failing to inform their clients that the contract of sale had been executed by the vendors. This caused the plaintiffs to be late in commencement of construction, as they thought the contract had yet to be signed, and gave the vendors ground to rescind the contract, which they did. By reason of the negligence of the solicitor, the clients lost the contract. Damages for loss of the property were therefore recoverable. What was decided in that case has no application here.

40. In this case, to allow a recovery of the loss as awarded below would place the plaintiffs in a better position than would be the case if the defendant had properly discharged his duty. The plaintiffs are not entitled to damages for the loss of the property. The order of the trial judge awarding such damages to be assessed before the registrar should be set aside.

Loss of opportunity

41. We now turn to the plaintiffs' alternative claim for the loss of opportunity to acquire a similar property. The basis of this claim is that if the defendant had discharged his duty, the plaintiffs would not only have avoided the contract but would also have acquired a similar property along Jalan Besar or a unit in Sim Lim Tower which is near to the premises where they had been conducting their business, and this opportunity they had lost by reason of the completion of the purchase of the property. The defendant, on the other hand, contends that since this claim was also premised on the same negligence or breach of duty on the part of the defendant, and all that he had failed to do was to prevent the plaintiff from completing the purchase because the Vendors had no title to the Property, the alternative claim must also fail.

42. We are unable to agree with the defendant's contention. We think that there is some merit in the argument advanced on behalf of the plaintiffs. While it is true that this alternative claim of the plaintiffs is premised on same negligence or breach of duty of the defendant as that on which the plaintiffs' claim of loss of the property is based, the same consequence does not necessarily follow with respect to the plaintiffs' loss under this head. On the evidence adduced, there are sufficient grounds for saying that if the plaintiffs had been properly advised they would have rescinded the contract for the purchase of the property in October 1993 or earlier and very likely would have immediately or soon thereafter looked for and purchased a similar property along Jalan Besar facing Sim Lim Tower or in the alternative a unit in Sim Lim Tower for the purpose of their business. The property (which they had then purchased) was rent controlled and they had purchased it for their own business and not for investment. They had adequate financial resources for the purpose, as they completed the purchase without any borrowing from a bank or other financial institution. At or about the time of their purchase, the tenancy of the shop unit at Sim Lim Square at which they carried on business was due to expire on 31 July 1994. Soon after the completion of the purchase, they instituted proceedings for recovery of vacant possession of the property and also at the same time commenced negotiations with the tenants of the property with a view to obtaining vacant possession, which they eventually succeeded.

43. There was evidence given by Azam Ali to the effect that if the defendant had advised the plaintiffs that the Vendors had

no title to the property, the plaintiffs would have sought to buy a similar property along Jalan Besar facing Sim Lim Tower or alternatively a unit in Sim Lim Tower having an area between 300 and 350 square feet. There was no evidence adduced showing that, at or about that time, there was available in the market a similar property along Jalan Besar. But there was evidence adduced showing the availability of units in Sim Lim Tower fulfilling the requirements indicated by Azam Ali. In particular, there was produced in evidence a list of sales of such units, and on the basis of this list, Azam Ali said that if the defendant had advised the plaintiffs in or before October 1993 that the Vendors had no title to the property they would have bought, for example, unit #03-15 having an area of 312.2 sq ft or #B1-47 having an area of 322.9 sq ft (depending of course on their availability).

44. Given their need for premises for their business and the approaching expiry of their existing tenancy of the shop unit in Sim Lim Square, we find that it is very likely that the plaintiffs would in fact have gone into the market to look for alternative premises for the purpose of their business, if they had been advised by the defendant against the completion of the property. On the basis of the evidence adduced, we find that they would have sought to purchase a unit in Sim Lim Tower as an alternative. In our judgment, the plaintiffs had indeed lost the opportunity of re-entering the market in or before October 1993 and buying a unit in Sim Lim Tower, which would meet their requirements, and this loss was occasioned by the defendant's negligence or breach of duty.

45. The next question is whether this loss is too remote. In this case, as there is a concurrent liability in contract and tort, it is necessary to bear in mind the respective tests for remoteness in these causes of action. In the case of contractual liability, the test for recoverable loss is that within the reasonable contemplation of the parties, based on their imputed knowledge (in the ordinary course of things) or actual knowledge: see *Hadley v Baxendale* (1854) 9 Ex 341*, The Heron II* [1969] 1 AC 350. As for tortious liability, the loss is recoverable if it is reasonably foreseeable in the circumstances: *The Wagon Mound* [1961] AC 388. However, there is authority for the view that the difference between the two tests is semantic and not substantial, especially in situations of concurrent liability: *Parsons v Uttley Ingam & Co* [1978] QB 791 at 807; *Kienzle v Stringer* (1981) 130 DLR (3d) 272 at 276.

46. The crucial question here is whether the loss falls within the defendant's reasonable contemplation or is reasonably foreseeable on the part of the defendant. Speaking generally, in the ordinary course of things, a nondescript purchaser may be interested in a property because of its potential or unique characteristics, or because it suits his personal or commercial requirements. If the purchase becomes abortive, he may, depending on the circumstances, immediately return to the market to purchase a similar alternative, or one that is significantly different, or he may not even purchase a substitute at all. In such a case, a purchaser's claim for loss of opportunity consequent on the negligence of the kind in question would be a claim for loss of investment opportunity. Depending on the circumstances, such a claim may or may not be too remote.

47. Turning to the case at hand, we should bear in mind the following. First, the plaintiffs were a commercial concern carrying on the business of dealing in electronic goods and articles. They had been carrying on business at the rented shop unit at Sim Lim Square which is in the vicinity of the property in question. This must have been known to the defendant. Second, the nature of the property. This was rent-controlled premises and it must have occurred to the defendant that the plaintiffs were purchasing it purely for their business purposes and not for investment. Soon after the conclusion of the contract, Azam Ali obtained the names of the tenants of the property and this was known to the defendant. The defendant was clearly aware that the plaintiffs would, after the completion of the purchase, proceed to apply to the Tenant's Compensation Board for recovery of vacant possession of the property: see the plaintiffs' letter to the defendant dated 14 October 1993. It is true that there was no direct evidence that the defendant was subjectively aware of the plaintiffs' commercial plans and requirements in purchasing property in the Jalan Besar area. Nevertheless, given these facts and the plaintiffs' financial means to buy the property without any borrowings, it was within the reasonable contemplation of the defendant or would have been reasonably foreseen by the defendant that, if he had advised the plaintiffs not to complete the purchase of the property on the ground that the Vendors had no title to the Property, the plaintiffs would have rescinded the contract and re-entered the market to purchase an alternative property which fulfilled their requirements. In our judgment, on the facts of this case, the loss in question was not too remote, either in contract or in tort, and is thus recoverable.

48. Finally, we move to the quantification of this loss. The characterisation of this loss is similar to the previous head of loss which we have disallowed, the only difference being the subject property in question. In respect of that loss, we are concerned

with the loss of the property which was purchased under the contract of sale. The measure applicable is the difference between the value of the property at the material date and the contract price: *Stinchcombe v Addison* (supra). In respect of this loss under consideration, we are concerned with the hypothetical alternative shop unit in Sim Lim Tower which the plaintiffs could have purchased had they been properly advised. According to Azam Ali, the unit which would meet the plaintiffs' requirements would be one having an area between 300 and 350 sq ft. For our purpose, we would take a unit with an area of 325 sq ft. Accordingly, the appropriate measure of this loss would be the difference between (a) the market value of a shop a unit in Sim Lim Tower having an area of 325 sq ft at or around the date of completion, i.e. 15 October 1993, and (b) the market value of such unit as at the date ('the material date') on which they ought reasonably to have purchased this substitute. In the court below, the plaintiffs' arguments on this claim were run along this line.

49. The question now is what is the material date for the purpose of this exercise. First, we do not accept the date of the judgment in O S 437 of 1995 as the material date. Next, the defendant suggested the date of 31 January 1994 or in the alternative 12 November 1994. The first was the date on which Mr Lim of SLB wrote to the defendant informing him that the Vendors had 'no power' to deal with the property and that no interest in the property had passed to the plaintiffs. We would reject this date, as Mr Lim was acting primarily for the bank, and no copy of the letter was then given to the plaintiffs; in effect the plaintiffs never received any definitive advice from Mr Lim on that issue. The second date, being premised on the letter from the Vendors' solicitors dated 12 November 1994 offering to refund to the plaintiffs 'all monies paid without interest', was manifestly unacceptable. The offer would not really reimburse the plaintiffs for their loss of the bargain and wasted expenditure. The plaintiffs could not be expected to act on such an offer.

50. It seems to us that the reasonable date should be 17 March 1995, being the date on which the plaintiffs received Mr Dyne's opinion on the property. By that date the plaintiffs had received: (a) Mr Lim's opinion that no title to the property had passed to them and the bank's rejection of the property as security for the loan; (b) P & P's advice on their lack of a good title to the property; and (c) Mr Dyne's opinion which confirmed the earlier legal opinions that (i) no title to the property had passed to the plaintiffs and (ii) the court order of 27 August 1993 was a nullity. It was patently clear by that date that, in the absence of any settlement with the beneficiaries, the plaintiffs ought to have sought alternative premises. Further, by 17 March 1995, they or their solicitors should have also searched the probate registry and discovered that the grant de bonis non had already been issued in favour of Alsagoff, precluding any remedy of the title defect. Accordingly, in our judgment, the material date to assess the plaintiffs' loss of opportunity under this rubric was the 17 March 1995.

Recovery of the tenant compensation and costs

51. The question here is whether it was reasonable in the circumstances for the plaintiffs to have paid the tenants of the property the compensations in June 1994, when prior to the dates of the payments they had notice of a very serious defect in the title of the property. On this issue we need to examine what precisely occurred between the time the plaintiffs completed the purchase of the property and the time the payments were made.

52. The plaintiffs completed the purchase on 15 October 1993, and immediately thereafter initiated an application to the Tenants' Compensation Board for the recovery of possession. They instructed their solicitors, P & P, to obtain an early date for the hearing, as the tenancy of the premises they were then occupying was due to terminate on 31 July 1994. In consequence, the hearing was fixed for 25 April 1994. In the meanwhile, Mr Lim of SLB, who had been instructed to act for both the plaintiffs and the Bank in the proposed mortgage of the property to secure a loan from the Bank, had made a search on the property and found that there was a defect in the title. On 31 January 1994, he wrote to the defendant pointing out that the Vendors had 'no power' to sell the property and that a grant of letters of administration de bonis non to the Basalamah estate was essential, and that the deed of assignment of the property was ineffectual to transfer any interest in the property to the plaintiffs. The defendant replied on 21 March 1994 setting out the circumstances leading to the completion of the purchase of the property and concluding that the sale had been sanctioned by the court order in O S 787 of 1993 and so long as the order remained in effect the title was good. In response, Mr Lim wrote to the defendant reiterating that the plaintiffs did not have a good title to the property. It does not appear from the evidence that at or about that time Mr Lim sent copies of these letters to the plaintiffs.

Most probably, he did not. Before us counsel for the plaintiffs asserted – and this was not challenged by counsel for the defendant – that copies of these letters were not sent to the plaintiffs at that time. Sometime thereafter, Azam Ali enquired with Mr Lim on the position with regard to the mortgage and the latter informed him that there was a problem with regard to the title to the property. However, there was no evidence to the effect that Mr Lim advised the plaintiffs specifically what the problem was. Nor did he advise the plaintiffs to take any steps in relation to rectifying the defect in the title or take any steps against the defendant. The reason for this is obvious. As counsel for the plaintiffs points out, at that time, Mr Lim's primary duty was to act for the Bank and, if the parties had gone ahead with the mortgage, he would represent the plaintiffs as well. It is significant that after the conversation with Mr Lim, Azam Ali or his co-director, Chow, raised the matter with the defendant and was assured that the title was good.

53. P & P also carried out searches on the property. On 30 June 1994, they wrote to Balan Nair stating that the Vendors were not the administrators of the Basalamah estate and enquiring whether they had taken any step to obtain the letters of administration de bonis non so that the defect in the title could be rectified. Balan Nair very promptly replied on 4 July 1994 stating that they had closed the file and that they were no longer acting for the Vendors. On 28 July 1994, P & P wrote to the defendant concerning the same point. In this instance, they set out the plaintiffs' position more positively. They stated that the title to the property had not passed to the plaintiffs and that the Vendors did not have the power to sell the property to the plaintiffs, as they were not the administrators of the Basalamah estate, and they demanded an explanation from the defendant. Here again, it is unclear from the evidence precisely when P & P carried out the searches on the property and advised the plaintiffs on the question of their lack of title to the property. We could only infer that they probably did the searches and advised the plaintiffs at or near the end of June 1994.

54. Prior to that date, however, the plaintiffs through P & P had been conducting negotiations with the tenants of the property as regards payment of compensation. They reached agreement with one of the tenants on or about 20 April 1994 and with the other tenant on or about 10 May 1994 as regards the amount to be paid to each of them. From the evidence adduced, it is clear to us that these agreements were reached before they were fully advised by P & P as to the defect in their title to the property. By these agreements the plaintiffs were committed to make the payments and they could not renege from the agreements with impunity.

55. The learned judge below said at 85 of his judgment:

> 85. The claim for the compensation paid to the tenants require greater examination. By the time the payments were made in June 1994 the plaintiffs have already been told by Mr Lim of the defect in the title. They also had [P & P] to act for them in the application to the Tenants Compensation Board. [P & P] made title and probate searches and informed the vendors' solicitors of the defect in the title. The plaintiffs should have sought advice on the state of their title before they paid the tenants. When they made payment, either they did not seek advice, or were not properly advised, or they disregarded the advice. In any case the defendant is not liable for the payment because the chain of causation was broken by the negligence of the plaintiffs or their advisors.

On the basis of the facts we have examined, this finding is plainly incorrect. It is true that the plaintiffs made the payments in June 1994, but the commitments to make the payments were made earlier, when they were not fully advised that they had no title to the property. On our analysis of the facts, the chain of causation for this loss sustained by the plaintiffs had not been broken and the defendant is liable to pay to the plaintiffs the compensations they had paid to the tenants of the property. For the same reason, he is liable to pay the plaintiffs the costs they had paid to their solicitors, P & P, in respect of the application to the Tenants Compensation Board.

Recovery of costs in O S 437 of 1995

56. The next issue is whether the plaintiffs are entitled to recover from the defendant their costs incurred in contesting the

claim instituted by Syed Alsagoff in O S 437 of 1995 as a consequential loss occasioned by the defendant's negligence. Central to this issue is the question of whether the plaintiffs had acted reasonably in contesting the claim.

57. For this purpose, the relevant starting point in time was the end of June 1994. By then, the plaintiffs' solicitors, P & P, had carried out the necessary searches on the property and must have advised them that they did not have good title to the property. This is clearly borne out by the two letters dated 30 June and 28 July 1994 written by P & P to Balan Nair and the defendant respectively, and copies of these letters were sent to the plaintiffs. For the next six months nothing of importance transpired. No useful step or action appeared to have been taken by the plaintiffs to address the vital issue of their lack of title to the property. In particular, they and those advising them did not actively explore the possibility of the Vendors obtaining the grant of letters of administration de bonis non to the Basalamah estate. On 27 December 1994, Mr Lim wrote to the plaintiffs informing them that the Bank would not accept the property as security, unless the defect in their title to the property was rectified. On this occasion, Mr Lim enclosed a copy of the letter dated 31 January 1994 which he wrote to the defendant.

58. After this, nothing appeared to have been done by the plaintiffs in seeking to rectify the defect in the title. Another two months elapsed, and only on 2 March 1995 or thereabouts, did they instruct P & P to consult Mr Dyne and obtain an opinion on the question of their title to the property. On 17 March 1995, Mr Dyne gave a written opinion which, inter alia, confirmed what P & P had said, namely: that the plaintiffs had acquired no title to the property as the Vendors did not have the letters of administration de bonis non to the Basalamah estate. He specifically dealt with the question of whether a good title had passed to the plaintiffs. He said at p 14:

> A good legal title in the Property has not passed to the Purchaser [plaintiffs]. In fact no title has passed to the Purchaser.

Hence, by the end of March 1995, the plaintiffs definitely knew from three sources: Mr Lim, P & P and Mr Dyne, that they had no title to the property, and short of negotiating with the administrator, Syed Alsagoff who had obtained the grant of letters of administration de bonis non on 16 September 1994, there was no real prospect at all of rectifying their lack of title to the property.

59. On 8 May 1995, Syed Alsagoff commenced proceedings in O S 437 of 1995 against the Vendors and the plaintiffs seeking an order to set aside the sale. With the opinions given by Mr Lim, P & P and Mr Dyne, it must have been clear to the plaintiffs that they had no real prospect of success in contesting the claim of Syed Alsagoff. They must have realised that the Vendors, not being the administrators of the Basalamah estate, had no capacity to convey to them the property and consequently they had not obtained any title to the property. It is true that in contesting the claim, the plaintiffs raised the defences of acquiescence and laches, but, again, it must have been obvious to the plaintiffs and their advisers that there was no factual basis for maintaining these defences and that there was no real prospect of success in such defences. In our judgment, the plaintiffs were highly unrealistic and did not act reasonably in contesting the claim of Syed Alsagoff in O S 437 of 1995.

60. It is submitted by counsel for the plaintiffs that they had to contest the claim, because only with a judgment could they have persuaded the defendant to accept that the title to the property was bad, given the respondent's previous insistence that the title was in order. The short answer to this is that, in such event, the plaintiffs could have apprised the defendant of their stand that there was no defence to the claim, and if the defendant was still insistent that the plaintiffs had a good title to the property, to offer to the defendant that he should take over the defence in the name of the plaintiffs and indemnify the plaintiffs against all the costs incurred.

Conclusion

61. We now make the following orders in relation to these two appeals. We allow the plaintiffs' appeal, namely, Civil Appeal No. 197 of 1999, to the extent as follows. We allow the claim of the plaintiffs for the amount of $54,500 being the total amount of the compensations paid by them to the tenants of the property and the amount of $5,416.39 being their costs incurred for

applying to the Tenants Compensation Board. We allow the defendant's appeal, Civil Appeal No. 195, to this extent. We set aside the order made by learned judge for assessment of damages and order that damages be assessed by the registrar on the basis of what we have decided in 48-50 above.

Costs

62. We now turn the question of costs. The plaintiffs have succeeded partially in Civil Appeal No. 197 of 1999, and we award them 50% of the costs of this appeal. Turning to Civil Appeal No. 195 of 1999, we think that, though the defendant has succeeded in part, he has not really succeeded on the point raised in his Case but on the point we raised and brought to counsel's attention. We are not disposed to award him any costs. Nor, on the other hand, should the plaintiffs be allowed the entire costs of this appeal. We award the plaintiffs 50% of the costs of this appeal. We so order. There will be usual orders for (a) refund to the plaintiffs or their solicitors of the deposit in court as security costs in Civil Appeal No. 197 of 1999, with interest, if any, and (b) payment to the plaintiffs or their solicitors of the deposit in court as security for costs in Civil Appeal No. 195 of 1999, with interest, if any, to account of costs.

YONG PUNG HOW	L P THEAN	CHAO HICK TIN
CHIEF JUSTICE	JUDGE OF APPEAL	JUDGE OF APPEAL