

Sin Sai Peng and Another v Soh Kim Lian Florence
[2002] SGHC 233

Case Number : Suit 1409/2001
Decision Date : 10 October 2002
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Suhaimi bin Lazim and Chua Beng Chye (Shook Lin & Bok) for the plaintiffs;
Alphonso Ang and Koh Tien Hua (A Ang, Seah & Hoe) for the defendant
Parties : Sin Sai Peng; Another — Soh Kim Lian Florence

Contract – Formation – Intention of parties – Sale and purchase of property – Whether purchaser entitled to vacant possession of property – Whether vendor entitled to balance of unpaid purchase price

Equity – Remedies – Mistress of husband moving in and living together with his family – Mistress agreeing to buy plaintiffs' apartment – Mistress paying part of apartment's purchase price leaving balance unpaid – Plaintiffs' acknowledging receipt of full purchase price – Parties continuing to live together in apartment – Plaintiffs' later claiming payment of unpaid balance – Mistress claiming vacant possession – Appropriate approach in resolving dispute – Whether to grant vacant possession

Equity – Remedies – Plaintiffs claiming various moneys and expenses – Presumption of advancement – Whether presumption arises – Whether defendant encouraging plaintiffs to renovate apartment – Whether plaintiffs' claim for maintenance fees and property tax valid and reasonable

Land – Sale of land – Part payment of purchase price – Vendors acknowledging receipt of full purchase price – Vendors claiming outstanding balance – Whether vendors claiming correct amount – Whether plaintiffs having vendor's lien

Landlord and Tenant – Rent and service charges – Loss of rental – Whether purchaser can claim for loss of rental when issue of entitlement to vacant possession not settled

Judgment

Cur Adv Vult

GROUND OF DECISION

1. In their statement of claim, the first plaintiff, Mr Sin Sai Peng ("Patrick"), and his wife, the second plaintiff, Madam Lee Kim Me, claimed the sum of \$271,795 from the defendant, Madam Florence Soh Kim Lian, who was Patrick's mistress from 1981 until September 1997. The plaintiffs contended that the sum claimed was the unpaid balance of the purchase price of No 97C, Upper Thomson Road, #05-11 Lakeview, Singapore 574329 (the "Lakeview apartment"), which was transferred by them to Florence in 1994. Florence denied owing the plaintiffs any money for the purchase of the Lakeview apartment and sought, inter alia, an order for vacant possession of the said property.

[A] BACKGROUND

2. This is a sordid tale of a bitter dispute involving a man, his loyal and long-suffering wife and his former mistress. For the ostensible purpose of advancing their respective cases, Patrick and Florence hurled countless allegations of sexual misconduct and perversion against each other. Both of them ought to have realised that the lurid details of their alleged sexual activities had nothing to do with what is essentially a dispute regarding the ownership of property.

3. In 1981, Patrick, a marine engineer, who was already married to Madam Lee, began an affair with Florence, who was then a clerk. He was 33 years old whereas she was only 21. In 1989, Patrick brought his mistress to his matrimonial home at Lakeview to meet his wife without giving the latter any prior notice. His purpose was, in his own words, to "increase the interaction" between the two women in his life.

When he brought Florence to the Lakeview apartment a second time, his wife left the matrimonial home for a few days. After this incident, Patrick had to wait for an opportune moment to ask his wife to meet Florence again.

4. In August 1990, Florence gave birth to a baby boy, A. Patrick, who had always wanted a son, was overjoyed. Florence was then living with her sister in Jurong and Patrick thought that it would be more convenient for him and Florence if she, and their son, Jason, had their own home. He arranged for her to buy a 5-room HDB flat in Tampines (the "Tampines flat") for \$162,500. He contributed \$61,000 for the flat, which was registered in Florence's name, and she paid the balance of the purchase price with money from her CPF account and a housing loan. She paid the monthly instalments for the loan as well as the conservancy and utility bills.

5. In the latter part of 1991, Patrick told his wife that he and Florence had a son. He expressed his desire to have Florence and Jason become "an integral part of the family". Madam Lee was hurt and angry but she agreed to meet Florence and Jason. Apparently, the meeting was a cordial one and Madam Lee played with Jason for two hours. After that meeting, Patrick often brought Florence and Jason to the Lakeview apartment.

6. In early 1992, Patrick told his wife that he wanted Florence and Jason to live with them in the Lakeview apartment. Madam Lim said that she agreed with her husband's plan as she was very fond of Jason. Furthermore, she accepted that it was troublesome for her husband to commute between Lakeview and Tampines.

7. Why Florence, who had her own spacious flat at Tampines, agreed to move into the Lakeview apartment in early 1992 cannot be fathomed. At the Lakeview apartment, she had to share a room with her son, Jason, her maid and Patrick's aged mother. Florence said that she felt very awkward in the Lakeview apartment but agreed to live there as she loved Patrick and he was a domineering man. The Tampines flat was then rented out for \$800 per month and Florence accepted Patrick's suggestion that she give Madam Lee half the rental as a gesture of goodwill.

8. The occupants of the Lakeview apartment got on well enough for a while. In November 1992, Florence gave birth to a girl, B. Patrick, Madam Lee, Florence and their children had innumerable outings in Singapore and vacations in Malacca, Genting Highlands, Port Dickson, Kuala Lumpur and Bali. According to Madam Lee, her relationship with Florence grew warmer with the passing days. Florence called her "sister" and A called her "mum".

9. In 1993, the plaintiffs, who made a profit of \$180,000 on the sale of their other apartment at Thomson Grove Condominium, wanted to purchase an apartment at Faber Garden (the "Faber apartment"). Florence said that Patrick suggested that she sell the Tampines flat and buy the Lakeview apartment from him and his wife in order to help them purchase the Faber apartment. The plaintiffs denied that they needed funds from the sale of the Tampines flat to help them purchase the Faber apartment and claimed that they sold the Lakeview apartment at a discounted price of \$380,000 to Florence because of their affection for her, A and B. It is worth noting that although the plaintiffs said that the Lakeview apartment was then worth around \$600,000, Richard Ellis' valuation report on 29 November 1993 stated that the apartment was worth only \$450,000 on the open market and added that its forced sale value was merely \$405,000.

10. On 5 November 1993, the Tampines flat was sold for \$285,000 and on 23 November 1993, the plaintiffs signed the sale and purchase agreement for No 6, Angklong Lane, #09-04 Faber Gardens, for \$808,000. Soon thereafter, on 6 December 1993, the sale and purchase agreement for the Lakeview apartment was signed by Patrick, his wife and Florence. As the completion date for the sale of the Tampines flat was scheduled for February 1994, Patrick moved all the occupants of the Lakeview apartment to the Tampines flat for about one and a half months so that the Lakeview apartment could be renovated. After the renovation work was completed, everyone moved back to the Lakeview apartment.

11. After receiving the proceeds from the sale of her Tampines flat, Florence issued a cheque dated 6 April 1994 for \$170,000 in favour of Patrick. Florence also paid Patrick and his wife \$50,800 from her CPF account and \$58,000 from a POSB loan. Although the total amount paid by Florence for the Lakeview apartment fell short of the purchase price of \$380,000, Patrick and his wife signed a note confirming that they had received full payment of the purchase price and the legal title to the Lakeview apartment was transferred to Florence in May 1994. Until the present dispute arose, Patrick and his wife did not demand from Florence the unpaid balance of the purchase price.

12. By 1995, relations between Patrick and Florence soured. Patrick alleged that Florence had an affair with a Greek national, George

Pililis, a married man. Florence claimed that she entertained George at Patrick's request to improve his business network. After frequent quarrels, Florence and her two children moved out of the Lakeview apartment in September 1997. She said that she left because of the plaintiffs' refusal to vacate the property and Patrick's intolerable and unreasonable behaviour towards her. A bitter battle for custody of the two children ensued.

13. After leaving the Lakeview apartment, Florence's lawyers demanded that the plaintiffs vacate the said property. In response to this, the plaintiffs placed a caveat on the Lakeview apartment on 26 September 1997. On 1 April 1999, Florence's lawyers again demanded that the plaintiffs vacate the Lakeview apartment. In 1998, Florence started to pay the maintenance fees and sinking fund levied on the said property. She paid the property tax for the said property with effect from February 2001.

14. On 13 April 1999, Florence commenced an action in the District Court for, inter alia, vacant possession of the Lakeview apartment and the removal of the caveat placed by the plaintiffs on the said property. The plaintiffs, who counterclaimed for, inter alia, the unpaid balance of the purchase price for the Lakeview apartment, successfully applied for the action to be transferred to the High Court. However, the action and counterclaim were discontinued on 6 January 2001 on the orders of the Registrar. The plaintiffs then commenced the present action to recover the unpaid balance of the purchase price for the Lakeview apartment. Florence counterclaimed for, inter alia, vacant possession of the said property. In response to the counterclaim, the plaintiffs asserted that they had a right to continue to reside in the Lakeview apartment permanently because that was the agreed arrangement when they sold the Lakeview apartment to Florence.

[B] APPROACH FOR RESOLVING THE DISPUTE

15. This case is unusual because the vendors and the purchaser, who were involved in a love triangle, lived together in the property which was sold and their living arrangements did not alter for many years after the sale of the said property. Furthermore, although the property was transferred to the purchaser in 1994, a substantial part of the purchase price has, to date, not been paid to the vendors and the question of the payment of the unpaid balance of the purchase price would probably not have arisen had the purchaser not insisted on having vacant possession of the said property.

16. I have no doubt that when the Lakeview apartment was transferred to Florence in 1994, no one contemplated that she would fall out with Patrick and no thought was given to the legal consequences of a break-down of their relationship on their living arrangements. In *Hardwick v Johnson* [1978] 2 All ER 935, 938, Lord Denning MR shed some light on the approach to take in dealing with such circumstances when he said as follows:

In most of these cases, the question cannot be solved by looking to the intention of the parties because the situation which arises is one which they never envisaged and for which they made no provision. So many things are undecided, undiscussed, and unprovided for that the task of the courts is to fill in the blanks. The court has to look at all the circumstances and spell out the legal relationship. The court will pronounce in favour of a tenancy or a licence, a loan or a gift, or a trust, according to which of these legal relationships is most fitting in the situation which has arisen; and will find that terms of that relationship according to what reason and justice require.

17. In *Pettitt v Pettitt* [1970] AC 777, 823, Lord Diplock also outlined what should be done by the court in a situation such as the present in the following succinct terms:

[T]he court imputes to the parties a common intention which in fact they never formed and it does so by forming its own opinion as to what would have been the common intention of reasonable men as to the effect [of the unforeseen event] if it had been present to their minds.

18. In the present case, it is unrealistic to expect the parties to continue to live together at the Lakeview apartment. This was finally conceded by the plaintiffs, who initially insisted that they had a right to reside there permanently. What the parties require is a

pronouncement on their present rights and liabilities in relation to the Lakeview apartment. In this context, there can be no doubt that the common intention of reasonable men, had they known of the changed circumstances in which the parties found themselves in since September 1997, would, without more, have been that Florence should have vacant possession of the Lakeview apartment. Such reasonable men would also have intended that Florence should pay the unpaid balance of the purchase price if she wants to have vacant possession of the said apartment. In view of these conclusions, what remains for consideration in relation to the Lakeview apartment are the following

- (a) Are there circumstances which might deny Florence the right to have vacant possession of the Lakeview apartment?
- (b) Did the plaintiffs, as alleged by Florence, waive their right to demand the unpaid balance of the purchase price of the Lakeview apartment from her? If they did not, what is the amount owed by Florence to them?
- (c) Are the plaintiffs entitled to claim from Florence the cost of renovation work undertaken by them in early 1994 and expenses such as property tax and maintenance fees?
- (d) Is Florence entitled to claim for loss of rental as from September 1997 or for the rental which she had to pay for her accommodation after she left the Lakeview apartment?

[C] THE CLAIM FOR VACANT POSSESSION

19. Florence's counterclaim for vacant possession of the Lakeview apartment will, for convenience, be considered first. The plaintiffs initially contended that Florence is not entitled to vacant possession of the Lakeview property because it was sold to her on the agreed understanding that they were to have a right to reside there permanently. However, they failed to prove the existence of such a family arrangement.

20. The plaintiffs said that they had intended to hold the Lakeview apartment as joint tenants with Florence and that their lawyer, Ms Angeline Jansen, advised them that this was not possible because Florence was using CPF funds to pay for the apartment. In view of this, the property was transferred to Florence with "the common intention and expectation to make the Lakeview property our permanent home". They said that Ms Jansen was aware of the family arrangement. However, Ms Jansen testified that she did not know about any "family arrangement" regarding the transfer of the Lakeview apartment to Florence.

21. The plaintiffs said that the Lakeview property was transferred to Florence to ensure that Florence's children, A and B, will be sufficiently provided for in the event that something untoward happened to their father. Neither of them were able to explain with any credibility why it was necessary for Florence and her children to be given a roof over their heads when all of them were already staying at the Lakeview apartment. In any case, Florence was then the owner of another property, the Tampines flat. I believe Florence when she said that the Lakeview property was transferred to her because she had agreed to hand over the proceeds of the sale of the Tampines flat to the plaintiffs to enable them to purchase the Faber apartment for themselves. This arrangement suited the plaintiffs as they were able to acquire another property and earn rental from it without having to move out of the Lakeview apartment.

22. As the trial progressed, Madam Lee became less sure of her rights under the alleged family arrangement. When cross-examined, she said:

Q. Is it not time for you to pack your bags and leave the Lakeview apartment?

A. If she pays the balance, we will go.

Q. However, in your affidavit, you said that the defendant's claim for vacant possession is unsustainable. Why?

A. Because we trusted her: I am so confused. Since she wants the whole house, she has to pay the balance.

23. By the end of the trial, the plaintiffs had become more realistic about their rights. In paragraph 131 of his written submissions at the close of the trial, the plaintiffs' counsel, Mr Suhaimi bin Lazim, outlined his clients' final position as follows:

The Plaintiffs acknowledge that their relationship with the Defendant has irretrievably broken down. The Plaintiffs agree that it is not realistic to continue their occupancy of the Lakeview Property.

(emphasis added)

24. As the question of relying on the alleged family arrangement no longer arises, what must next be addressed is the plaintiffs' contention that they need not vacate the Lakeview apartment until the purchase price has been fully paid by Florence because they had a vendor's lien on the property. Florence's counsel, Mr Alphonso Ang, retorted that the lien claimed by the plaintiffs did not entitle them to retain possession of the Lakeview apartment.

25. If one looks squarely at the character of the present transaction, it would be quite inappropriate to talk about a vendor's lien. Apart from the fact that the sale of the Lakeview apartment was completed long ago in 1994, such a lien must have been furthest from the plaintiffs' mind when the Lakeview apartment was transferred to Florence. After all, they even signed an acknowledgement that they had been paid the entire purchase price even though they knew that this was not the real position. In any case, even if the plaintiffs had such a lien, they must be taken to have abandoned it long ago. I thus order that Florence be given vacant possession of the Lakeview apartment.

[D] THE UNPAID BALANCE OF THE PURCHASE PRICE

26. The plaintiffs' claim for the unpaid balance of the purchase price of the Lakeview apartment will next be considered. Admittedly, they signed an acknowledgement that they had received from Florence the entire consideration for the transfer of the property to her. However, it is not disputed that Florence did not pay \$380,000 for the Lakeview apartment. If Lord Diplock's approach in *Pettitt v Pettitt* is followed, the inescapable conclusion must, without more, be that Florence would have to pay the unpaid balance of the purchase price if she is to have vacant possession of the Lakeview apartment.

27. Florence contended that the question of payment of the unpaid balance of the purchase price does not arise because such payment had been waived by the plaintiffs. She admitted that neither Patrick nor his wife told her that the unpaid balance of the purchase price would never be collected from her. When cross-examined, she said as follows:

Q. Is it true that Patrick and his wife never told you that the payment of the balance of the purchase price had been waived?

A. Yes.

Q. What conduct of theirs gave you the impression that the payment of the balance of the purchase price had been waived?

A. They did not ask me to pay.

28. In truth, the position of the unpaid balance of the purchase price of the Lakeview apartment was left in limbo because of the nature of the parties' relationship and their living arrangements at the relevant time. Patrick and his wife may have been content not to demand the unpaid balance of the purchase price so long as everyone continued to live in harmony at the Lakeview apartment. However, the position needed re-examination once Florence demanded that they vacate the premises. I thus hold that the plaintiffs are entitled to the unpaid balance of the purchase price of the Lakeview apartment.

29. As for how much is owed by Florence, the plaintiffs pleaded that she has paid them only \$108,800. After taking into account the conveyancing fees, the plaintiffs contended that Florence still owed them the sum of \$271,795 for the Lakeview apartment. Florence rightly asserted that the \$170,000 paid by her into the DBS Bank account of Patrick and Florence after the completion of the sale of her Tampines flat in 1994 must be taken into account when determining the amount she has already paid for the Lakeview apartment. Initially, the plaintiffs unashamedly denied that the \$170,000 was a part payment of the purchase price of the Lakeview apartment. Patrick claimed that the \$170,000 was Florence's gift to him. Given the timing of the three transactions handled by Patrick, namely the sale of the Tampines flat by Florence in November 1993, the purchase of the Faber apartment by the plaintiffs in November 1993 and the sale of the Lakeview apartment to Florence in December 1993, as well as the circumstances of the case, I hold that the sum of \$170,000 paid into the plaintiffs' account by Florence was in respect of the purchase of the Lakeview apartment. As such, the plaintiffs are, without more, only entitled to claim \$101,795 from Florence as far as the unpaid balance of the purchase price of the Lakeview apartment is concerned.

[E] THE PLAINTIFFS' OTHER CLAIMS

30. During the trial, the plaintiff sought to deduct \$61,000 from the \$170,000 paid by Florence to them on the ground that the \$61,000 was a repayment to Patrick of his contribution for the purchase price of the Tampines apartment. They also sought to recover from Florence the cost of renovating the Lakeview apartment in early 1994 as well as other expenses such as maintenance fees and property tax. These claims fail for a number of reasons.

31. To begin with, the plaintiffs' claim in this action is for the sum of \$271,795, which is, according to them, the unpaid balance of the purchase price of the Lakeview property. There is no indication in the pleadings that \$61,000 was being claimed as the refund of a contribution by Patrick towards the purchase price of the Tampines flat. Indeed, the plaintiffs' position is that the payment by Florence of the \$170,000 "is wholly separate and *unconnected with the present claim*" by them (see paragraph 7 of the plaintiffs' reply and defence to Florence's counterclaim). As for the plaintiffs' claim in relation to renovation work, the plaintiffs did point out in their defence to Florence's counterclaim for vacant possession that they renovated the apartment in 1994 in reliance on an alleged arrangement which entitled them to reside in the Lakeview apartment permanently. However, this assertion was made to show the existence of the alleged family arrangement. It does not follow that a claim for the cost of renovation work had been made.

32. Although the plaintiffs' claims in relation to the \$61,000 and the renovation cost and other expenses have not been pleaded, I might add, for the sake of completeness, that even if these claims had been pleaded, they would not have been allowed for the reasons stated below.

The claim for \$61,000

33. Florence claimed that the \$61,000 paid by Patrick for the Tampines flat was a gift to her. She has the burden of proving her assertion. No presumption of advancement arises as Florence is Patrick's mistress and not his wife. After considering the evidence and listening to the witnesses, I hold that on a balance of probabilities, it is more likely than not that the \$61,000 was a gift from Patrick to Florence.

34. When cross-examined, Patrick explained why he decided that Florence, who was then staying with her sister, and his son, A, should have a home of their own in the following terms:

Q. You decided that it was time for the defendant and A to have a house to live in?

A. I have to be a responsible father to my son and to provide a roof for his mother.

I considered the defendant more or less as my wife.

(emphasis added)

35. Patrick next testified that if he had the money, he would have presented the flat as an "outright gift" to the person he considered "more or less" as his wife. When cross-examined, he said as follows:

Q. Were you prepared, as a Chinese businessman, to buy a house outright for her?

A. If I were a rich man, I would but I did not have money to buy a house outright for her and my son. I needed assistance.

(Emphasis added)

36. If Patrick was, in his own words, prepared to give Florence an "outright gift" of a house had he been a rich man, it may be assumed that as he could not afford to pay the entire amount required for the purchase of the Tampines flat, he gave her part of the money needed to purchase this flat.

37. It is also pertinent to note that in the re-amended reply and defence to the counterclaim, it was alleged that Florence gave Patrick the \$170,000 from the proceeds of the sale of the Tampines flat "*in appreciation*" of the initial capital contribution by him for the purchase of the flat. It was thus not asserted by the plaintiffs that Florence refunded Patrick \$61,000 and gave him \$109,000. The plaintiffs cannot blow hot and cold. After taking into account all the circumstances of the case, including the fact that Patrick regarded Florence "more or less" as his wife and wanted to be a responsible father to A by providing a roof for him and his mother, I hold that the \$61,000 paid by Patrick for the Tampines flat was a gift to Florence. As such, the amount owed by Florence to the plaintiffs for the Lakeview apartment is only \$101,795.

The plaintiffs' claim for the cost of renovations and other expenses

38. During the trial, the plaintiffs claimed from Florence the \$80,000 spent on renovating the Lakeview apartment in early 1994 as well as a number of other specified expenses. Apart from the fact that this claim was not pleaded, it is unreasonable and ludicrous.

39. In *Dodsworth v Dodsworth* [1973] 228 EG 1115, the plaintiff, an old lady who lived alone in a bungalow, invited her younger brother and his wife, the two defendants, to live with her in her bungalow. The defendants spent more than 700 on improvements to the premises in the expectation that they would be able to remain there. After the relationship between the parties broke down, the defendants sought an order protecting their right to occupy the bungalow. Braithwaite J, who found that the plaintiff had encouraged and induced the defendants to spend money on improvements to the bungalow, ordered the plaintiff to repay the defendants the amount expended by them. His decision was affirmed by the Court of Appeal, which varied the amount due to the defendants to 976.

40. In another case relied on by the plaintiffs, an Australian decision, *Morris v Morris* [1982] 1 NSWLR 61, a widower, the plaintiff, discussed his living arrangements with the defendants, his son and daughter-in-law, after his wife passed away. It was agreed that the plaintiff should sell his house, use the proceeds of the sale to pay for the construction of a second storey extension to the defendants' house and stay in the extended house. Subsequently, the plaintiff's son left the house after his marriage broke down. The plaintiff also left the house when his relationship with his daughter-in-law deteriorated. It was held by McLelland J that it would be unconscionable and inequitable for the defendants to retain the benefit of the plaintiff's expenditure on their property free from any obligation of recoupment. He thus ruled that the plaintiff was entitled to an equitable charge over the defendants' property in the sum of \$28,000. In coming to his decision, he relied on the following statement by the Privy Council in *Chalmers v Pardoe* [1963] 1 WLR 677, 681, 682:

There can be no doubt upon the authorities that where an owner of land has invited or *expressly encouraged another to expend money* upon his part of his land *upon the face of an assurance or promise* that that part of the land will be made over to the person so expending his money, a court of equity will *prima facie* require the owner by appropriate conveyance to fulfil his obligation...

41. In *Dodsworth v Dodsworth* and *Morris v Morris*, the owner of a house invited another party to move into his or her house and that other party's expenditure to improve the house was encouraged by the owner. In the present case, all the parties were living together in the same home and it was not established that Florence encouraged Patrick or his wife to renovate the Lakeview apartment in 1994. I believe that Florence had no say in the matter. The unreasonableness of the plaintiffs' position becomes even more evident when it is borne in mind that their claim for the cost of renovations includes money spent on beds, mattresses, furniture and household appliances, which have been used by them, their children and Patrick's mother since early 1994. Surely, these old and used items, if not already discarded, can be carted away when the plaintiffs vacate the Lakeview apartment.

42. Admittedly, some value may be attached to tiles and grilles that were replaced in 1994. However, in the unexpected altered circumstances that the parties find themselves in after the breakdown of Patrick's relationship with Florence, the claim for the cost of renovations, which, in the main, satisfied the plaintiffs' own needs, ought to be rejected.

The plaintiffs' claim for other expenses

43. The plaintiffs also asserted that Florence should reimburse them for the sums paid by them for maintenance fees, sinking fund and property tax from 1994 until Florence left the Lakeview apartment in September 1997. This claim, which was not pleaded, is also a ridiculous claim. Surely Patrick, the head of the household, cannot expect his mistress to maintain him, his wife, his children and his mother by paying for the maintenance fees and property tax from 1994 onwards when he was not paying her any rent for occupying the Lakeview apartment.

F. DEFENDANT'S COUNTERCLAIM FOR RENTAL

44. I now turn to Florence's claim for loss of rental for the Lakeview apartment for the period after November 1997. Her basis for asking the plaintiffs to move out of the Lakeview apartment in 1997 was that she was entitled to vacant possession of the property without having to pay the unpaid balance of the purchase price. This, as has been pointed out, is a fallacious assumption. In the unusual circumstances of this case, there can be no doubt that until the question of Florence's liability to pay the unpaid balance of the purchase price of the Lakeview apartment has been sorted out, one cannot expect the plaintiffs to give Florence vacant possession of the said apartment. That being the case, the question of a claim for loss of rental does not arise. For the same reason, I also hold that Florence is not entitled to claim the amount paid by her for the premises required by her after she left the Lakeview apartment in September 1997. No one asked her to leave the said apartment. She conceded that she left because that was the only way to end her relationship with Patrick.

45. It is also worth noting that as far as Florence's claim for loss of rental of the Lakeview apartment is concerned, no satisfactory evidence of the alleged loss was tendered. Her witness, a real estate agent, admitted that he had no knowledge of the rental of apartments in Lakeview at the relevant time. As such, for more than one reason, this claim by Florence cannot be countenanced.

G. REMOVAL OF THE PLAINTIFFS' CAVEAT

46. Florence applied for an order that the plaintiffs remove their caveat on the Lakeview property. As the plaintiffs ought to be allowed to retain the caveat until the unpaid balance of the purchase price has been paid to them, Florence's application is dismissed.

H. COSTS

47. The plaintiffs and the defendant shall bear their own costs of the action.

Sgd:

TAN LEE MENG

JUDGE