Lim Chin San Contractors Pte Ltd *v* Shiok Kim Seng (trading as IKO Precision Toolings) and another appeal
[2013] SGCA 6

Case Number	: Civil Appeal No 76 of 2012 and Civil Appeal No 78 of 2012
Decision Date	: 18 January 2013
Tribunal/Court	: Court of Appeal
Coram	: V K Rajah JA; Sundaresh Menon JA (as he then was)
Counsel Name(s)	: Chia Swee Chye Kelvin (Samuel Seow Law Corporation) for the appellant in CA 76 of 2012 and the respondent in CA 78 of 2012; Eugene Tan Kon Yeng and Eng Cia Ai (Drew & Napier LLC) for the respondent in CA 76 of 2012 and the appellant in CA 78 of 2012
Parties	: Lim Chin San Contractors Pte Ltd — Shiok Kim Seng (trading as IKO Precision Toolings)

Damages – appeals

Damages – assessment

Equity – satisfaction

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2012] 3 SLR 595.]

18 January 2013 Judgment reserved.

Sundaresh Menon CJ (delivering the Judgment of the Court):

Introduction

1 The present cross appeals arise out of an assessment of damages, which had first been heard before the Assistant Registrar ("the AR"). Both parties appealed against the AR's decision to the High Court Judge ("the Judge"). The Judge's decision on the assessment of damages appeal was delivered on 31 May 2012 and this included an addendum that he provided after hearing further arguments. That decision is reported as *Lim Chin San Contractors Pte Ltd v Shiok Kim Seng (trading as IKO Precision Toolings)* [2012] 3 SLR 595 ("the AD Decision"). In the AD Decision, the Judge referred to an earlier judgement that he himself had delivered after hearing the trial of the matter which dealt with the issue of liability. It was pursuant to the earlier judgement that damages came to be assessed. The earlier judgment is reported as *Lim Chin San Contractors Pte Ltd v Shiok Kim Seng (trading as IKO Precision Toolings)* [2011] 1 SLR 433 ("the Original Decision").

Facts

Parties to the dispute

2 Lim Chin San Contractors Pte Ltd ("Lim Contractors") is the developer of Alpha Industrial Building ("the Building") and the owner of the premises known as unit #05-11 ("the Premises") in the Building. The managing director of Lim Contractors is one Lim Chin Leong ("Mr Lim").

3 Shiok Kim Seng ("Mr Shiok") was the tenant of the Premises from January 2005. Although the lease expired at the end of 2008, Mr Shiok remained in possession of the Premises until September 2010. Before renting the Premises, Mr Shiok had run a business as a middleman trading in precision tooling. When he decided to go into the business of manufacturing precision tooling he required new premises, which for his purposes, had to have a floor area of at least 517 m^2. This was the context in which he leased the Premises. He has now vacated the Premises and his business has ceased. He is also facing several bankruptcy petitions.

Background to the dispute

4 Lim Contractors and Mr Shiok entered into the following written tenancy agreements (collectively referred to as the "Tenancy Agreements"):

(a) An agreement dated 9 December 2004 ("the First Tenancy Agreement"), under which Lim Contractors agreed to lease the Premises to Mr Shiok for two years (from 1 January 2005 to 31 December 2006) at a monthly rent of $3,200 (not inclusive of GST).

(b) An agreement signed sometime in March 2007 ("the Second Tenancy Agreement"), under which Lim Contractors agreed to rent the Premises to Mr Shiok for two years (the term was to begin retrospectively on 1 January 2007 and was to expire on 31 December 2008) at the same monthly rent of $3,200 (not inclusive of GST).

5 In the Original Decision, the Judge found that Mr Lim had made two representations to Mr Shiok which had induced the latter to take a lease of the Premises from Lim Contractors. These representations were:

(a) that a mezzanine floor could be built to substantially increase the floor area of the Premises (see the Original Decision at [13]) ("the First Representation"); and

(b) that the Premises could be purchased by Mr Shiok (see the Original Decision at [26] and [29] to [30]) ("the Second Representation").

The First Representation and the Second Representation are collectively referred to as "the Representations".

6 Pursuant to the Representations, Mr Shiok constructed a mezzanine floor in the Premises. The contractor that he engaged for this work was Heng Loong Construction, of which Mr Lim was a partner. The renovation work (which included the cost of constructing the mezzanine floor) took five or six months and cost $106,176.03 (see the Original Decision at [6]). The addition of the mezzanine floor almost doubled the usable space at the Premises from approximately 270 m^2 to 539 m^2. This suited Mr Shiok's purposes, since, as noted above, he required a floor area of at least 517 $m^2$to enable him to conduct the business of manufacturing precision tools (see above at [3]). Following the construction of the mezzanine floor, Mr Shiok operated his business from the Premises.

7 The mezzanine floor was subsequently found to be irregular by the Building and Construction Authority ("BCA") as it caused the gross floor area to exceed the permitted limit and was contrary to planning regulations. Despite being required to do so, Mr Shiok was unwilling to remove or otherwise regularise the mezzanine floor. On 4 November 2009, Lim Contractors obtained a Court order permitting it to enter the Premises and take the necessary steps to remove the mezzanine floor. The mezzanine floor was eventually removed on 29 and 30 January 2010.

8 As to the Second Representation, the Judge found that there had been some attempt by Mr Shiok to raise the subject of a purchase in 2006 at which time, on Mr Lim's initiative, it was deferred until 2007 following the anticipated issuance of the Certificate of Statutory Completion ("CSC") of the Premises (see the Original Decision at [29]). But Mr Shiok never took steps to enforce the asserted right to purchase the Premises and by the time of the Original Decision, the Judge found that Mr Shiok was in no position to exercise any such right (see the Original Decision at [33]).

9 Moreover, it is significant to note that by the time the Second Tenancy Agreement was entered into in March 2007, the reference to the possible sale of the Premises that had been in the First Tenancy Agreement had changed.

10 In the First Tenancy Agreement, clause 3(d) provided as follows:

> 3. THE LANDLORD hereby agrees with THE TENANT as follows:-
>
> ...
>
> (d) During the term of the Tenancy, THE LANDLORD agrees not to sell THE SAID PREMISES to any purchasers other than THE TENANT at the predetermined sale price of **Singapore Dollars Four Hundred Sixty Two Thousnd And Fifty Four Only (S$462,054.00) or at S$159.00 per sqft**, exclusive of GST and stamp duty which are payable by THE TENANT. All rental payable shall be calculated till the date of sale completion.
>
> [emphasis original]

In the Second Tenancy Agreement, clause 4(i) provided:

> During the term of the Tenancy, THE LANDLORD agrees not to sell THE SAID PREMISES to any purchasers other than THE TENANT at the sale price which will be determined after the CSC.
>
> [emphasis added]

11 It may be noted that under each of the Tenancy Agreements, Lim Contractors' agreement, such as it was, was only for the duration of the respective term of the Tenancy created thereunder. Further, under the Second Tenancy Agreement, there was no longer an agreement even as to price. The Judge did not find that the Second Tenancy Agreement was vitiated in any way though he accepted Mr Shiok's evidence that "he felt constrained to some extent by the investment he already put into the unit" to agree to the Second Tenancy Agreement (see the Original Decision at [31]).

12 We return to the significance of these facts a little later but it is sufficient for the moment for us to note that the Judge found that Mr Lim's representations to Mr Shiok gave rise to a proprietary estoppel (see the Original Decision at [30]). To satisfy the proprietary estoppel, the Judge concluded that an award of damages would be appropriate. In effect, the Judge made an order for equitable compensation, the quantum of which was to be assessed by the Registrar. The Judge further offered the following guidance as to what he had in mind:

> 33 ... an award of damages to put Mr Shiok *into the position he would be in had he not entered into the two tenancy agreements*. This would reverse any detriment he has suffered, as well as take into account any benefit he had enjoyed as a result of entering into the tenancy agreements. ...

...

36 ...

(b) Mr Shiok is entitled to damages to be assessed to *restore him to the position he would be in had he not entered into the two tenancy agreements*. The registrar is to assess the totality of rental, renovations and mezzanine floor payments made by him against the totality of benefits received by him in connection with the first tenancy until the date of vacation of the premises. Subject to this overriding aim, the assessing registrar should consider, *inter alia*, the amount of money Mr Shiok spent on renovating and improving the unit, including the building and removal of the mezzanine floor and the profits from his business conducted therein. I appreciate that a precise measure would not be possible – any evidential difficulties should be resolved in an equitable manner and in the spirit of my judgment.

[emphasis added]

13 The Judge had thus concluded in the Original Decision that the equity that he found had arisen in favour of Mr Shiok was to be satisfied by an award of compensation designed to restore the parties to the position they would have been in if the Tenancy Agreements had never been entered into, rather than by an order compelling the sale of the Premises to Mr Shiok. The guidance that the Judge gave in this regard contemplated an account being taken of all the losses Mr Shiok made while he was at the Premises and an assessment of what profits he may have made had he conducted his business elsewhere. Although the Judge had invited the parties to come back to him should they have required any clarification, in the event they did not take this up.

14 Neither party appealed against the Original Decision. It follows that it is no longer open to Lim Contractors to challenge the Judge's finding that an equity had arisen in favour of Mr Shiok by reason of the Representations. Nor is it open to either party to challenge his decision that this was to be satisfied if at all by an award of equitable compensation with the aim of restoring Mr Shiok to the position he would have been in had he not entered into the Tenancy Agreements. The Judge also ordered Mr Shiok to vacate the Premises within six weeks of the date of the Original Decision, failing which he was to pay Lim Contractors double rent at the rate of $6,400 per month (see the Original Decision at [36(a)]).

15 The matter then came before the AR for the assessment of damages. The learned AR assessed the quantum of damages at the sum of $1,048,100. Both parties appealed against the AR's decision ("the Registrar's Appeals").

Decision Below

16 The Registrar's Appeals were heard by the Judge. In the AD Decision, the Judge varied the AR's decision and ordered Lim Contractors to pay Shiok the following sums (see the AD Decision at [32], [33] and [35]):

(a) the cost of renovating the Premises including the installation of the mezzanine floor which he assessed as amounting to $188,817.98;

(b) compensation for the loss of opportunity to purchase the Premises, which the Judge quantified at a sum of $46,205.40;

(c) costs for the various legal actions that Mr Shiok had been exposed to and particularised as

follows:

(i) cost of hearing the Registrar's Appeals fixed at $8,000 (inclusive of disbursements);

(ii) cost of the hearing before the AR to be paid by Lim Contractors to Mr Shiok to be taxed if not agreed;

(iii) costs for all other related legal actions fixed at $3,000; and

(d) simple interest of 5.33% per annum to be payable on items (a) and (b) above starting from 8 October 2008, being the date on which Mr Shiok filed his defence and counterclaim. No interest was payable on item (c).

17 Both parties appealed against the AD Decision. Civil Appeal No 76 of 2012 ("CA 76/2012") is Lim Contractors' appeal and Civil Appeal No 78 of 2012 ("CA 78/2012") is Mr Shiok's appeal.

Issues before this Court

18 The following issue arises in CA 78/2012:

(a) On the basis that the Court assessing damages is obliged to assess it in accordance with the terms of the Original Decision, whether the Judge had impermissibly departed from the Original Decision; and if he did, what should follow from this ("the First Issue").

19 The following issue arises in both CA 76/2012 and CA 78/2012:

(a) What is the appropriate assessment of the compensation, if any, that is to be awarded to Mr Shiok ("the Second Issue").

20 We begin with the First Issue as this involves a determination of the basis upon which the award of damages is to be assessed. We then move to consider the Second Issue, which is the actual assessment of damages.

The First Issue

21 Mr Shiok contends that in this case, the Court tasked with assessing the damages was obliged to do so in accordance with the terms of the Original Decision and the directions and principles that were set out therein. For present purposes, those principles have been set out and summarised at [12] and [13] above. This much was uncontroversial.

22 The fact that an assessing court is obliged to adhere to any principles laid down by the trial court for the assessment has been recognised, for instance, in *Ho Yew Weng Alan James v Poh Eng Wah Mark t/a Sg Vehicles Trading* [1997] SGHC 179 at [9]:

> Where judgment is given for damages to be assessed they will be assessed by the registrar unless provision is made by the judgment as to how they are to be assessed. See O 37 r 1(1) [of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)]. The registrar must assess the damages in accordance with the terms of the judgment. He cannot disregard the judgment and the assessment of damages is not an occasion for him to set it aside or vary it in any way. Appeals from his decision and the decision of the district judge are no different in this respect.

23 In *Singapore Court Practice 2009* (Jeffrey Pinsler gen ed) (LexisNexis, 2009) at para 37/1–6/8

("*Singapore Court Practice*") the learned commentators expand on this as follows:

> Issues of liability are regarded as having been determined and will not be revisited at the hearing of the assessment of damages ... the registrar must assess the damages in the context of the judgment. He is not at liberty to vary or modify the judgment in any way (*How Yew Weng, Alan James v Poh Eng Wah Mark t/a Sg Vehicles Trading* (DCA No 50 of 1996, para 9).

24 Although the Judge in hearing the Registrar's Appeals was doing so "as if it arose before him for the first time" (see *Singapore Court Practice* at para 37/1–6/14) and was thus not bound by the AR's decision, the Judge was nonetheless bound by his own judgment in the Original Decision.

25 It is therefore unsurprising that the parties are in agreement on this threshold point. The divergence between them is instead on the question of whether the Judge had in fact departed from the Original Decision when he delivered the AD Decision; and if he had, what follows from this in terms of the actual assessment of the appropriate compensation.

Mr Shiok's case

26 Mr Shiok's case on this is that the Judge had departed from the terms of the Original Decision in assessing damages. Instead of assessing damages on the basis of restoring Mr Shiok to the position that he would have been in had he not entered into the Tenancy Agreements, as he had determined and ordered in the Original Decision, the Judge decided in the AD Decision that the equity in question would be best satisfied by an award that reimbursed Mr Shiok for the cost of installing the mezzanine floor, and compensated him for the loss of opportunity to purchase the Premises and for the costs that he incurred in these proceedings. According to Mr Shiok, the Judge in the AD Decision pronounced an "altogether different remedy" from that which he had contemplated in the Original Decision. [note: 1]

27 In particular, Mr Shiok submits that the Judge wrongly considered his loss of profits to be an irrelevant factor in the AD Decision at [31], when earlier, in the Original Decision at [36(b)], he had directed the registrar to take into account business profits or losses in assessing the appropriate measure of compensation.

Lim Contractors' case

28 In reply, Lim Contractors emphasised that the AD Decision had been made by the same Judge as had made the Original Decision, and that he was thus best placed to know and delimit the terms of the Original Decision and would have been fully mindful of the importance of not exceeding those terms.

29 Regarding Mr Shiok's claim for business losses, Lim Contractors argued that this claim had neither been pleaded nor presented to the Judge during trial and thus could not have been one of the claims allowed by the Judge in the Original Decision. As such, the Judge did not depart from the Original Decision when he rejected Mr Shiok's claim for the alleged business losses, as this head of claim had not in fact been contemplated by the Original Decision.

Analysis

30 As we have noted above, because neither party had appealed against the Original Decision, it is *res judicata* and the Judge was bound by it. In order to determine whether the Judge departed from the Original Decision, it is necessary to compare its terms against the AD Decision.

31 The references in the Original Decision at [33] and [36(b)] (reproduced above at [12]) to restoring Mr Shiok to the position he would have been in had he not entered into the Tenancy Agreements are framed in terms of reliance loss. The reliance-based approach to quantifying a loss looks to what the plaintiff's position would have been had the defendant not made the relevant representations or had the plaintiff not acted upon them. By contrast, the expectation-based approach looks to what the plaintiff's position would have been had the defendant actually acted in accordance with the representations.

32 However, in the AD Decision at [8] and [11] the Judge appeared to have reopened the issue. He noted that neither the expectation- nor reliance-based approach was determinative and that he could take into account the different bases to arrive at an "intermediate figure". In particular, the Judge said as follows at [11] and [12] of the AD Decision:

> 11 Therefore, to summarise, the authorities suggest that I am not bound by any specific measure in quantifying the amount of compensation to be awarded. Mr Shiok's expectations and reliance are certainly relevant factors which I would take into account, but these factors are not determinative. Ultimately, the court would have to look at all the circumstances of the case in order to arrive at a proportionate award that would satisfy the equity raised by the estoppel. The court has discretion to adopt whichever measure (or any intermediate figure) that it considers to be the most appropriate sum given the facts of the case.
>
> 12 With the above principles in mind, I shall now address the quantum of compensation that would in my view sufficiently satisfy the equity raised by the proprietary estoppel claim.

33 While the Judge was undoubtedly correct to summarise the effect of the authorities he cited at [9] and [10] of the AD Decision as standing for the general proposition that a court fashioning a remedy to satisfy the equity in favour of the plaintiff is not bound by any specific measure in quantifying the amount of compensation, he appears to have overlooked the fact that he had already made a determination affecting this in the Original Decision. This was not a case without any prior binding pronouncement on the approach that was to be taken in the assessment. On the contrary, the Judge had already made a determination which continued to bind him.

34 It is evident from a perusal of the rest of the AD Decision, in particular at [13] to [31], that the Judge departed from the terms of the Original Decision. Specifically, whereas in the Original Decision the Judge had decided on equitable compensation being framed under a reliance-based approach, in the AD Decision, the Judge instead awarded:

> (a) reliance losses for the money spent by Mr Shiok on the renovation carried out by Mr Shiok shortly after entering into the First Tenancy Agreement; and
>
> (b) expectation losses for Lim Contractors' failure to sell the Premises to Mr Shiok.

35 In the premises, the Judge said he considered it inappropriate to examine the loss of actual or potential profits.

36 However, the fact that the Judge did depart impermissibly from the Original Decision is not the end of the matter, as Mr Shiok contended before us. This is because any assessment of equitable compensation in accordance with the terms and parameters laid down in the AD Decision would also have been subject to certain implicit, even if not explicit, limits.

37 In particular, these limits in the present case would have included the following:

(a) Any award of compensation could only extend to the losses causally linked to the Representations and would not properly have included losses that Mr Shiok would have incurred in any case. Specifically:

(i) Mr Shiok would not be able to claim damages for losses incurred from being at the Premises save to the extent that such losses were caused by the Representations. This was what the Judge was trying to remedy and, ultimately, *all* that he could legitimately remedy;

(ii) It follows from this that Mr Shiok would not be able to claim damages for losses that he would have incurred in any event regardless of whether he was operating at the Premises or elsewhere; and

(iii) Equally, if Mr Shiok had benefits that were peculiar to being at the Premises that he would not have had at some other premises, he would have had to account for those benefits against any damages that he was in principle entitled to receive from Lim Contractors.

(b) The Judge ordered that the equity would be satisfied by a remedy that was fashioned on the basis of an award of damages. This was an order for equitable compensation and would hence always be subject to the equitable rules that govern the assessment of just what compensation would in the event be *equitable*.

38 The Judge observed at [3] of the AD Decision that "[o]nce the court determines that a proprietary estoppel claim has been established, the Court is faced with the unusual task of fashioning an appropriate remedy to satisfy the equity". This much is correct, but it bears emphasis that it is the equity that the Court aims to satisfy, rather than the claimant's expectations (see *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong*") at [244] citing *Jennings v Rice* [2003] 1 P & CR 100 at 245):

> The equity does not arise from the claimant's expectations alone, but from the combination of expectations, detrimental reliance and the unconscionableness of allowing the [representor] to go back on the assurances.

39 The key to the Court's response is flexibility, to ensure that the remedy is appropriate to the equity in each case, and in this venture the Court may consider *all* the relevant circumstances, including considerations of proportionality between the remedy and the detriment which is its purpose to avoid (see *Hong Leong* at [240] to [249]).

40 In so doing, the court will take a 'minimalist approach' (see *Gillett v Holt* [2000] 1 Ch 210 at 237):

> The court's aim is, having identified the maximum [extent of the equity], to form a view as to what the minimum required to satisfy it and do justice between the parties.

41 A corollary of the minimalist approach is that where the equity has been satisfied by enjoyment and is therefore exhausted, no further remedy may lie (see *Hong Leong* at [249]).

42 From the foregoing authorities, the following principles may be extracted:

(a) Upon the equity arising, its value and how it should be satisfied are matters for the Court's discretion;

(b) In exercising this discretion, the Court should have regard to all the circumstances, including the expectation upon which the plaintiff has acted and the specific detriment he has suffered;

(c) In fashioning the remedy the Court must ensure proportionality between the expectation, the detriment and the remedy;

(d) The Court must recall that its task is to satisfy the equity that it considers has arisen. It follows that the strength of the equity will be a relevant consideration. This is another way of looking at the "maximum extent of the equity" which the remedy must satisfy;

(e) The Court should also be mindful of the great flexibility it has at its disposal in fashioning the appropriate remedy. It may give effect to the parties' expectations (common or otherwise); or it may limit the remedy to maintain an element of proportionality, or because it considers that the equity has been satisfied by enjoyment or even exhausted;

(f) Subject to the above, the Court's aim, having identified the maximum extent of the equity, is to do the minimum required to satisfy it.

(a) See *Hong Leong* at [240], [244] to [249] and authorities cited there.

43 We apply these principles to the assessment of damages in the present case to the extent they have not been excluded by the determination already made by the Judge in the Original Decision. Here, the Judge had decided that the equity is to be satisfied by an award of compensation that has as its overriding aim to restore Mr Shiok to the position he would be in had he not entered into the tenancy. But in assessing this, it remained necessary for the Court to ensure that the remedy would be proportionate and would go no further than the minimum required to satisfy the maximum extent of the equity.

The Second Issue

44 During the hearing before us, counsel agreed that something of a broad brush approach was appropriate in this case.

Analysis

45 The AR's decision in our judgment serves to be a useful starting point because he had endeavoured to assess the compensation in faithful adherence to the various principles laid out in the Original Decision.

46 Before the AR, the parties had agreed on a two-step approach: [note: 2]

(a) First, Mr Shiok was to be restored to the position he would have been in if he had never entered into the First Tenancy Agreement. To do this, the expenses he actually incurred and the profits he actually enjoyed were calculated. Based on the AR's calculations, this yielded a net loss of $848,443.43.

(b) Next, Mr Shiok's position was projected on the basis of a hypothetical 2010 position in which he had not rented the Premises at all. The AR found that in this event, Mr Shiok would nonetheless have embarked on a tool manufacturing business, and would have rented an alternative premises of at least 517m^2, which would then have obviated the need for him to build

the mezzanine floor. But Mr Shiok would have incurred a higher rent on this hypothesis from having to pay for larger premises. Lim Contractors provided unchallenged evidence that the hypothetical rent would have been higher than the rent Mr Shiok actually paid (see the AR's decision at [41]). Having deducted the difference in hypothetical rent and actual rent and having added the cost of construction of the mezzanine floor to the hypothetical profits, the AR derived a sum of $199,656.57. [note: 3] We note that the AR did not provide any additional compensation for the loss of the chance to purchase the Premises. This was also the Judge's approach in the Original Decision (at [36(b)]).We agree with this approach as to include such compensation would have led to double counting, given that Mr Shiok was to be put in the position of not having entered into the Tenancy Agreements at all.

(c) Adding the two sums together, the AR found that Mr Shiok was entitled to a total sum of $1,048,100 in damages.

47 This was well and good, but the initial difficulty with the AR's decision is that it went on to assess damages up until 2010. In doing so, the AR did not take into account a number of critical facts. First, the assessment ignored the fact that all of Mr Shiok's losses were incurred in 2009 and 2010. This much was common ground between the parties. But by that stage, when the losses were actually incurred by Mr Shiok, the Second Tenancy Agreement had ended and Mr Shiok was holding over the Premises without any legal right to do so.

48 At the point of the expiry of the Second Tenancy Agreement, Mr Shiok had not taken any steps to enforce whatever rights he may have had under clause 3(d) of the First Tenancy Agreement. The Judge was prepared to find that what had been contemplated under that Agreement was an option to purchase but for the fact that both Mr Lim and Mr Shiok had testified that clause 3(d) accurately reflected the position they had agreed on (see the Original Decision at [26]). Clause 3(d) contained no more than a pre-emption right for the duration of the term created under the First Tenancy Agreement. But even taking it at its highest, an option to purchase (if that is what it in fact was) counts for nothing if it has not been exercised by the time of its expiry. Moreover, whatever right had been conferred under the First Tenancy Agreement had been markedly diluted under the Second Tenancy Agreement (see [9] to [11] above).

49 In these circumstances, it is unclear how any losses incurred by Mr Shiok after the expiry of the lease could be for Lim Contractors' account. While the AR found that the Original Decision suggested that damages were to be assessed for the period until 2010, we disagree. It is true that the Judge did say the assessment was to cover the totality of the payments and benefits up to the date Mr Shiok vacated the Premises. However, the Judge also said that the overriding aim of the assessment was to restore Mr Shiok to the position he would be in had he not entered into the two Tenancy Agreements. In our judgment, if this was the overriding aim of the assessment, then on a proper reading of the Original Decision the quantum of compensation could not legitimately have extended to the losses sustained in the period beyond the expiry of the lease.

50 If the assessment contemplated in the Original Decision had ended at the end of 2008, by remaining at the Premises for the duration of the Tenancy and assuming that he would have been just as successful in his business if he had operated out of other premises, Mr Shiok's position would indeed have been somewhat worse than had he never leased the Premises. Although he would, on the AR's assessment, have incurred additional rent of $57,072 for the four year period of the duration of the lease had he taken alternative premises, against this he incurred a sum of $78,822.03 for the cost of installing the mezzanine floor at the Premises. Thus in net terms, he had to spend an additional amount of $21,750.03 by being at the Premises. It is true that Mr Shiok in fact expended a total amount of $188,817.98 for the renovations that he carried out at the Premises (see [16(a)] above),

but he would have been expected to incur some part of the cost of these renovations (beyond the sum of $78,822.03 spent on constructing the mezzanine floor) at any alternative location. However, regard should also be had to the rental paid by Mr Shiok for the six months when he was carrying out the renovations and did not have the use of the Premises. This amounts to $19,200. In total, he appears to have been worse off by an amount of around $41,000 at the low end (being the aggregate of $21,750.03 and $19,200), and around $151,000 at the high end if the other renovation costs are factored in. However, as noted above, on no basis would it have been appropriate to factor the full extent of the other renovation costs.

51 Aside from the fact that the AR's assessment included Mr Shiok's losses after the expiry of the Second Tenancy Agreement, there were yet other difficulties. It was unclear for instance what effect the global financial crisis of that time had on these losses. For instance, would Mr Shiok have incurred these losses as a consequence of the grim global economic circumstances in 2009 and 2010 regardless of where his business was situated?

52 Mr Shiok's principal complaint was that his main customer Asian Electronic Technology Pte Ltd ("Asian Electronic") withdrew its business from Mr Shiok because once he lost the use of the mezzanine floor in 2009, he would not have been in a position to fulfil their orders. But Mr Shiok knew at all times that the Second Tenancy Agreement would expire at the end of 2008, and absent a commitment on Lim Contractors' part to extend the lease or to sell the Premises to him, it was incumbent on him to find alternative premises. This he never did and in the event, ***that*** was the reason he was not in a position after 2008 to service Asian Electronic's requirements.

53 Over and above all this, the AR did not consider the element of proportionality, presumably because this was not highlighted by the Judge. But as we have earlier noted, this is always a critical consideration for the Court in fashioning a remedy appropriate to the equity in each case. Mr Shiok accepts that the AR did not explicitly consider the principle of proportionality. However, he argues that a distinction should be drawn between (i) the grant of the remedy itself (where proportionality is a relevant consideration); and (ii) the assessment of the compensation which is to satisfy the equity (where he contends proportionality is no longer a separate or relevant consideration). According to Mr Shiok, the Judge must be taken to have already considered the requirement of proportionality in fashioning the remedy of damages on a reliance basis instead of allowing Mr Shiok to purchase the Premises (with the effect that Mr Shiok's expectation of purchasing the property with the uninterrupted use of the mezzanine floor would not be fulfilled), and on this basis it was argued that there was no further requirement for the AR to consider proportionality at the time of assessment.

54 We reject this as illogical. The Court is *throughout* exercised in coming to a decision on the appropriate remedy to satisfy the equity. The *type* of remedy should be proportionate, and where the remedy is compensation, the *quantum* of the remedy must also be proportionate. There is no basis in principle or in logic for coming to any different view. In fact, where compensation is determined to be the appropriate remedy, the quantum of damages will often be the issue that is of most interest to the parties. There is no reason at all to artificially insulate this crucial aspect of the exercise from the requirement of proportionality. Significantly, the Judge had noted at [33] of the Original Decision that if on the assessment, "Mr Shiok was in fact better off after the two tenancy agreements, then he would have suffered no detriment, and justice would have been served".

55 In coming to a view on proportionality, the following facts are relevant:

(a) The equity in this case was relatively weak to begin with. The Judge was unsure of the terms of the representation that had been made (see the Original Decision at [30]); and further, he considered that the equity had at least partially been satisfied by the grant of the Second

Tenancy Agreement (see the Original Decision at [31] and [32]). The unresolved ambiguity as to the terms of the representation is not unimportant. If the representation had been confined to the First Tenancy Agreement, which expired without any option for the sale of the Premises having been exercised (assuming in Mr Shiok's favour that this is what he had), Mr Shiok would have lost any right he had to purchase the Premises. Significantly, as we have already observed, the terms of the Second Tenancy Agreement were different on this point and under that Agreement there was no longer *any* enforceable right to purchase the Premises since it expressly provided that the price at which any transaction would be concluded would have to be agreed. There was no suggestion that the Second Tenancy Agreement was vitiated in any way.

(b) Insofar as the equity rested on the representation that Mr Shiok could purchase the Premises, aside from the foregoing facts, it is significant that although the Judge said that he would have been prepared to find that an option to purchase the Premises had probably been granted under the First Tenancy Agreement (even though it had been framed as a pre-emptive right of refusal) and further that the Mr Shiok tried to initiate discussion for the purchase in 2006 but was delayed by Mr Lim (see the Original Decision at [15] to [17], [26], and [29]), the fact is that while Mr Shiok had called for and obtained a valuation report with a view to purchasing the Premises in 2005, and even assuming he had communicated with Mr Lim to purchase the Premises in 2006, he did nothing further to assert or exercise a right of purchase. Moreover, whatever significance may be placed on these events, the position in favour of Mr Shiok was significantly diluted when the parties entered into the Second Tenancy Agreement (see above at [55(a)]).

(c) Moreover, in fact, it appears that Mr Shiok was not actually in a position to purchase a unit of the requisite size (see the AR's decision at [12]).

(d) It is also significant that quite apart from whether Mr Shiok was able to afford purchasing the Premises, the truth ultimately is that he would never have proceeded with the purchase if the Premises did not come with the mezzanine floor. This is because he needed the additional area that the mezzanine floor provided in order to have the capacity to conduct a tool manufacturing business. Therefore, once the mezzanine floor had to be demolished, Mr Shiok would no longer have been interested in the purchase.

(e) Unfortunately for Mr Shiok, the mezzanine floor was as a matter of law liable to be demolished. The decision on whether or not the mezzanine floor was a permissible structure lay with the BCA and it was never within Lim Contractors' control.

(f) Had Mr Shiok somehow completed the purchase of the Premises prior to 2007 and then been required to demolish the mezzanine floor, in all likelihood he would have been left with no remedy at all. He would still have lost Asian Electronic as a customer, and suffered the consequential business losses. As it transpired, he in fact enjoyed the use of the Premises with no increase in rent for more than five years.

(g) Insofar as the equity was founded on the representation that a mezzanine floor could be built, by October 2005 Mr Shiok was aware that there was a problem with the mezzanine floor because the valuers he had engaged to value the property so as to enable him to consider an offer had told him so. Moreover, the actual amount Mr Shiok spent on the mezzanine floor was $78,822.03; and after this expenditure, he enjoyed an extension of the lease and then stayed on thereafter for a further period. The mezzanine floor was eventually demolished in January 2010 and by then it had been enjoyed by Mr Shiok for more than four years. Any equity in this regard had therefore been significantly spent.

56 In the circumstances, we find that the sum arrived at by the AR at the end of his assessment would have been grossly disproportionate to the strength of Mr Shiok's equity, the extent of his reliance, the benefits already enjoyed by him, and the strength of any real expectation he may have had; and also having regard to the improbability that Mr Shiok would have been in a position to exercise any right to purchase the Premises or that it would ultimately have suited his purpose.

57 In our judgment, having regard to both the modest scope of the maximum extent of the equity that arose in Mr Shiok's favour, as well as the Judge's decision that it was best satisfied by an award of compensation, the equity would be satisfied by an award in Mr Shiok's favour that amounted to 10% of the amount assessed by the AR.

58 On this basis Mr Shiok will get a fraction of the amount assessed by the Registrar, *viz*, ($848,443.43 + $199,656.57) x 10% = $104,810. This also seems reasonable having regard to the extent to which Mr Shiok's position really was worse off by entering into the Tenancy Agreements. The Judge observed at [29] of the Original Decision that Mr Shiok's actions in spending a sum in excess of $100,000 on the renovations which took almost six months to complete were inexplicable if all he really had was a two year term at a monthly rent of $3,200. Other things being equal and limiting the assessment of the extent to which he was worse off by taking the lease of the Premises up to the end of the Second Tenancy Agreement, the extent to which Mr Shiok was worse off is represented by a monetary value of somewhere between $40,000 and $151,000 (see above at [50]). As against this, Mr Shiok would have incurred some renovation costs with any other premises. Moreover he has had the benefit of the Premises and the mezzanine floor for a period of more than four years. Hence, the maximum possible extent of the equity in his favour that has yet to be satisfied would be sufficiently reflected by an order for compensation in the amount we have indicated.

59 We accordingly order Lim Contractors to pay Mr Shiok the following sums:

(a) compensation assessed at the sum of $104,810; and

(b) simple interest of 5.33% per annum to be payable on this amount from 19 August 2010, being the date of the Original Decision.

60 We also order that Lim Contractors is to pay Mr Shiok 25% of costs of the hearing before the AR which are to be taxed if not agreed. Lim Contractors is also to pay Mr Shiok the costs of the trial before the Judge which culminated in the Original Decision. Save as aforesaid each party is to bear its own costs.

61 In the result, we dismiss Mr Shiok's appeal and partially allow Lim Contractors' appeal but make no order as to the costs of the appeals. Each party is therefore to bear its own costs of the appeals.

[note: 1] Appellant's Case ("AC") in CA 78/2012 at para 39

[note: 2] ACB in CA 76/2012 Vol II at p 109 para 26

[note: 3] ACB in CA 76/2012 Vol II at p 115 para 44