[illegible] Without honouring his undertakings he absconded from Hong Kong with the money. The bank not having received any redemption money refused to execute a reassignment, and so the plaintiffs failed to obtain the agreed security for their advance. On an action by the plaintiffs against, inter alia, the defendant solicitors, to recover the money advanced, Penlington J held that they were liable in damages for negligence. The Court of Appeal of Hong Kong by a majority allowed their appeal. The plaintiffs appealed to the Judicial Committee.

LORD BRIGHTMAN said that the prevalence of the Hong Kong style of completion was well established and its continuance would not be discouraged. However the practice, as operated by the defendants in the instant case, involved a foreseeable risk, namely the risk of loss to the plaintiffs by placing the money at the disposition of the vendor's solicitor because he might embezzle it. That risk could readily have been avoided without undermining the basic features of the practice. The purchaser's or lender's solicitor could take reasonable steps to satisfy himself that the vendor's or borrower's solicitor had authority from his client to receive the purchase money or loan, and if the property was already subject to a mortgage which was to be discharged so much of the purchase price or loan needed to discharge the prior mortgage could be paid by cheque in favour of the mortgagee or his authorised agent and not the vendor's solicitor. Such precautions would ensure that the purchaser or lender had an unanswerable claim against the other side for specific performance. Accordingly the defendants were negligent in not foreseeing and avoiding the risk to the plaintiffs. Appeal allowed.

APPEARANCES: *Peter Millet QC and Marion Simmons (Linklaters & Paines); Leolin Price QC and Richard Mills-Owen QC (the latter of the Hong Kong Bar) (Slaughter & May)*

Reported by Miss Stella Solomon, barrister

LAND

Landlord and tenant: breach of repairing covenant: assessment of damages: tenant moving into alternative accommodation: whether entitled to costs of alternative accommodation

CALABAR PROPERTIES LTD *v* STITCHER

CA -- Stephenson, Griffiths and May LJJ

28 July 1983

Appeal from Judge Stabb QC, sitting as an official referee

By a lease assigned to the defendant tenant in October 1975, the plaintiff landlords demised a top floor flat in a block of flats. The landlords covenanted to keep the exterior in good condition and repair. Soon after taking possession the tenant and her husband found out that water penetrating due to defects on the outside was causing dampness and damage. In April 1978 the landlords brought an action in the county court against the tenant for arrears of rent. The tenant counterclaimed in June 1978 for damages for the landlord's breach of the repairing covenant. In January 1981 the tenant and her husband moved out of the flat and went to live in rented accommodation. On 14 December 1982 the judge decided that the landlords were liable under their repairing covenant and awarded the tenant damages for, inter alia, the cost of making good and redecorating the flat (reduced by one third for the element of betterment), but refused to award any damages for the outgoings on the flat while it was rendered uninhabitable, or consequential loss of use during that period based on the diminution of capital or rented value. The tenant appealed.

STEPHENSON LJ said that the running costs or outgoings in respect of the tenant's flat were not recoverable. Even though, while the tenant was not living in the flat because of the landlords' breach of contract, she was not getting anything for those charges which were payable under the lease, she had not terminated the lease and had to pay outgoings on some property, and thus, the costs of the property which she rented as alternative accommodation for herself and husband were prima facie the loss suffered by being kept out of her flat for the landlords' continuing breach of covenant, subject to the renting of that alternative accommodation being reasonable. But no claim was made in the counterclaim for the provision of alternative accommodation. It was too late to do so now. The other head of damage was based on the diminution in value for loss of capital or rental value. That damage was too remote because the tenant bought the lease as her home. If she had bought it as a speculation and to the knowledge of the landlords had intended to assign, then the loss of capital or rented value would have been the appropriate measure of her damage.

GRIFFITHS LJ said that damages in cases such as the present should include the cost of the redecoration, a sum to compensate for the discomfort, loss of enjoyment and health involved in living in the damp and deteriorating flat and any reasonable sum spent on providing alternative accommodation after the flat became uninhabitable. But damages for costs of providing alternative accommodation could not be claimed at the appeal stage because they had not been pleaded.

MAY LJ agreed with both judgments. Appeal dismissed.

APPEARANCES: *Peter Ralls (Theodore Goddard & Co); Robert Pryor QC (Grangewoods)*

Reported by Akhtar Razi Esq, barrister

Landlord and tenant: business premises: termination of lease: compensation

EDICRON LTD *v* WILLIAM WHITELEY LTD

CA—Waller, Slade and Robert Goff LJJ

6 October 1983

Appeal from Judge Thomas, sitting as a High Court judge, p 257 *ante*

The landlords demised to the tenents the first floor of a building, of which the tenants remained in occupation for 14 years for the purposes of their business. The tenants surrendered the original lease during the 14 year period and were granted a lease of the first three floors of the same building. On taking over the second and third floors they did not succeed to the business of the previous tenants. The landlords served on the tenants a notice under s 25 of the Landlord and Tenant Act 1954 terminating the tenancy. Having initially issued an originating summons seeking a new tenancy under s 24 of the 1954 Act, later the tenants discontinued those proceedings. They gave up possession of the premises and issued proceedings to determine the amount of compensation payable to them under s 37 of the 1954 Act as amended. The judge held that 'the premises' in s 37(3)(*b*) referred to the entire premises occupied at the date of termination of the tenancy so the tenants were not entitled to double compensation for their occupation of the first floor for 14 years, even though that brought them within s 37(3)(*a*). The tenants appealed.

SLADE LJ said that, as the tenants contended, s 37(3)(*b*) required the identification of specific premises 'being or comprised in the holding', as ascertained under s 37(3)(*a*). The words 'comprised in' made clear that it was not necessary for the relevant premises to constitute the entire holding and on the facts the entire holding was not relevant. The judge rightly held that, for the purposes of s 37(3)(*a*), the relevant premises 'being or comprised in the holding' were the first floor of the building. That part had been continuously occupied for 14 years. In s 37(3)(*b*) 'the premises' referred to those specific premises ascertained as premises 'being or comprised in the holding' under s 37(3)(*a*), and as having been occupied for the purposes of the occupier's business. There was no change in occupation of the first floor of the building during the 14 year period, which occupation was for the purposes of the tenant's business. On the facts, condition (*b*) was accordingly not in point. There was no need to satisfy condition (*b*) since the continuous occupation of the relevant premises for the 14 year period satisfied condition (*a*). The tenants, having brought themselves within s 37(3)(*a*), were accordingly entitled to twice the compensation provided for by s 37(2).

ROBERT GOFF and WALLER LJJ agreed. Appeal allowed.

APPEARANCES: *Robert Reid QC and Simon Berry (Pickering Kenyon); John Furber (Thornton Lynne & Lawson)*

Reported by Miss Susan Denny, barrister