

JUDGMENT Express

912

Leelawathy PT Singam
v. Tang Ching Yee & Ors

[2025] 6 MLRH

LEELAWATHY PT SINGAM

v.

TANG CHING YEE & ORS

High Court Malaya, Kuala Lumpur
Ahmad Shahrir Mohd Salleh J
[Suit No: WA-22NCvC-349-06-2022]
22 May 2025

Legal Profession: *Duty of care — Claim for damages for professional negligence — Failure by defendants as plaintiff's solicitors to advise plaintiff on critical aspects of investment scheme plaintiff had entered into, which had since failed — Failure by defendants to disclose ongoing relationship with company that promoted scheme — Whether defendants breached duty of care owed to plaintiff — Whether defendants' liability limited only to legal fees paid by plaintiff*

Tort: *Negligence — Professional negligence — Claim for damages — Failure by defendants as plaintiff's solicitors to advise plaintiff on critical aspects of investment scheme plaintiff had entered into, which had since failed — Failure by defendants to disclose ongoing relationship with company that promoted scheme — Whether defendants breached duty of care owed to plaintiff — Whether defendants' liability limited only to legal fees paid by plaintiff*

The plaintiff, a retiree, was interested in participating in an investment scheme involving residential units ('investment scheme') situated in Bradford, United Kingdom and had engaged the defendants, who were partners of the law firm Messrs Raslan Loong ('MRL'), to advise and act on her behalf in relation thereto. The investment scheme offered fixed rental returns of between 8% and 10% per annum over a 10-year period, was portrayed as a 'hassle-free income' entailing 'no involvement in property management', featured a 'fully flexible resale option', and was marketed to the plaintiff by an agent of a property marketing company, CSI Prop International Properties ('CSI Properties'). At the material time, MRL was on the solicitor panel of CSI Properties. The structure of the investment scheme involved several interrelated companies ('Alpha Group of Companies'). Based on the 1st defendant's legal advice, the plaintiff purchased four residential units in the investment scheme for a total consideration of £198,320. Between October 2017 and January 2019, the plaintiff became the legal proprietor thereof, and for a period of 2 years thereafter, received the rental returns as promised in the promotional materials. The investment scheme subsequently collapsed and the plaintiff discovered that the scheme could fall within the definition of 'collective investment scheme' ('CIS') under s 235 of the English Financial Services and Markets Act 2000 ('FSMA') and would be unlawful unless the Alpha Group of Companies had been authorised under the FSMA to promote or operate such a scheme. On 27



September 2024, the High Court of England and Wales held that the schemes marketed and sold by the Alpha Group of Companies constituted unregulated collective investment schemes and that the Alpha Group of Companies had breached s 19(1) of the FSMA by failing to obtain the requisite authorisation. The plaintiff commenced the instant action against the defendants for professional negligence for failing to advise her that the investment scheme could potentially constitute a CIS. The plaintiff contended that she was not informed that the guaranteed rental returns were not legally enforceable and that the contractual arrangements involved significant risks. The plaintiff further claimed that she would not have proceeded with the investment had she been properly advised. On the other hand, the defendants argued that: (i) their engagement did not extend to advising the plaintiff on commercial, financial, or other non-legal risks; (ii) the 1st defendant acted only in the capacity of a conveyancing solicitor; (iii) the 1st defendant's professional responsibility was confined solely to the legal process of acquiring title to the four units; (iv) the failure of the scheme was attributable to the manner in which it was implemented rather than the fact that it constituted a CIS under the FSMA; (v) the plaintiff had failed to mitigate her loss; and (vi) the defendants' liability, if any, was contractually limited to the amount of legal fees paid by the plaintiff.

Held (allowing the plaintiff's claim):

(1) The scope of a solicitor's duty could not be determined in a vacuum but must be assessed in the context of the entire retainer and the surrounding circumstances in which the legal services were rendered. The solicitor's duty was not limited merely to what was expressly stated in the engagement letter but was shaped by the nature of the transaction, the client's vulnerability and the reasonable expectations of the client based on the circumstances. (para 20)

(2) MRL's Standard Terms of Appointment specifically provided that MRL would bring to the client's attention any material legal issues or concerns identified by MRL on the information given. Reading the said provision in conjunction with the outlined scope of work, it was evident that the defendants were obligated to advise the plaintiff on all material legal issues, which necessarily included the risk that the scheme could fall within the ambit of a CIS under the FSMA. As was admitted by the 1st defendant during cross-examination, it was her duty to consider whether the investment scheme could potentially be a CIS. In the circumstances, the defendants' duty under the retainer extended beyond mere conveyancing formalities. (paras 24, 25 & 27)

(3) As a solicitor qualified to practise in England and Wales, the 1st defendant ought to have been aware that the promotional materials which formed part of the overall arrangement of the scheme were a relevant and necessary consideration when evaluating whether a scheme constituted an unregulated CIS under the FSMA. The failure to consider those materials, particularly when they formed the basis on which the scheme was marketed to the plaintiff, amounted to a serious departure from the standard of care expected of a reasonably competent solicitor. (paras 37-38)



(4) Any evaluation of a property transaction which was part of an investment scheme ought to necessarily include an assessment of whether the scheme was legally compliant. The 1st defendant's failure to undertake a proper evaluation of the regulatory status of the investment scheme and to advise the plaintiff accordingly constituted a clear breach of her duty of care. (para 40)

(5) At the material time, the 1st defendant was regulated by the Solicitors Regulation Authority ('SRA') of England and Wales which had issued a series of guidance documents and warnings relevant to investment schemes, expressly directed at solicitors. Her failure to adhere to the SRA's mandatory guidance and warnings constituted an additional, independent breach of her duty of care. (para 46)

(6) As a solicitor acting for a client in a property investment transaction, the 1st defendant clearly owed a duty to advise the plaintiff on the legal implications of the documents being signed. This duty necessarily included drawing attention to any material inconsistencies between the representations relied upon by the client, such as those found in the promotional materials, and the actual contents of the contracts. The failure to do so constituted a breach of the duty of care owed by a reasonably competent solicitor acting in the circumstances. (paras 52 & 55)

(7) The 1st defendant's failure to disclose to the plaintiff the nature of MRL's ongoing relationship with CSI Properties and how that relationship might impair or affect MRL's ability to provide impartial and independent legal advice, had deprived the plaintiff of the opportunity to make an informed decision as to whether she wished to proceed with MRL as her legal representative. The omission by the 1st defendant to make such disclosure was a breach of her professional duty of care to the plaintiff. (paras 61-62)

(8) On the facts, the defendants' breach of duty had directly caused the plaintiff's financial loss. Their liability was not contractually limited to the legal fees paid. The breach of the duty of care owed to the plaintiff in multiple respects had materially influenced the plaintiff's decision to proceed with the investment. But for the defendants' failures, the plaintiff would not have entered into the transaction. (paras 67 & 72)

Case(s) referred to:

4VVV Ltd & 434 Ors v. Nicholas Spence & 12 Ors [2024] EWHC 2434 (refd)

Clearpath Marketing Sdn Bhd v. Malayan Banking Berhad [2019] 4 MLRA 461 (refd)

Financial Conduct Authority v. Asset Land Investment Plc [2016] UKSC 17 (refd)

Megat Najmuddin Megat Khas & Ors v. Perwira Habib Bank Malaysia Bhd [2003] 1 MLRA 505 (refd)

ML Breadworks Sdn Bhd v. Malayan Banking Berhad [2012] MLRHU 940 (refd)

Mulpha Khuang Maritime Carriers Sdn Bhd v. Philip Koh Tong Ngee & Ors [2015] MLRHU 1362 (refd)



Premier Hotel Sdn Bhd v. Tang Ling Seng [1995] 4 MLRH 511 (refd)

Messrs Yong & Co v. Wee Hood Teck Development Corp Ltd (1) [1984] 1 MLRA 165 (refd)

Legislation referred to:

Financial Services and Markets Act 2000 [UK], ss 19(1), 235(2), (3)

Counsel:

For the plaintiff: Tan Ch’eng Leong; M/s KP Lu & Tan

For the 1st defendant: S Ravindran; M/s Sreenevasan Young

For the 2nd & 4th defendants: Vinoshini Saminathan; M/s Raslan Loong, Shen & Eow

For the 3rd defendant: Balasubramaniam Ravi Sankar; M/s Adnan Sundra & Low

JUDGMENT

Ahmad Shahrir Mohd Salleh J:

Introduction

[1] This is a claim for professional negligence brought by the plaintiff against the defendants. At all material times, the defendants were partners in the law firm of Messrs Raslan Loong (“MRL”). MRL had been engaged by the plaintiff to advise and act on her behalf in relation to an investment scheme in the United Kingdom.

[2] The core issue in this action is whether the defendants, acting through the 1st defendant, breached their duty of care owed to the plaintiff. The alleged breach pertains to the failure to advise the plaintiff on several critical aspects of the investment scheme. The investment has since failed.

[3] These included the risk that the scheme might be classified as an unregulated collective investment scheme (“CIS”) under the English Financial Services and Markets Act 2000 (“FSMA”), the legal enforceability of the guarantees said to secure the promised returns and the true legal character and associated risks of the contracts the plaintiff was induced to enter into.

Brief Background Of Facts

[4] The plaintiff is a Malaysian citizen and a retiree. In the year 2016, she became interested in participating in an investment scheme involving residential units located in a student accommodation development known as the Scholar’s Village (“Investment Scheme”). The development was situated along the Great Horton Road in Bradford, United Kingdom.

[5] The Investment Scheme was marketed to the plaintiff by an individual named Delia Yip (“Delia”). Delia acted as an agent for a property marketing company known as CSI Prop International Properties (“CSI Properties”). The promotional materials presented to the plaintiff described the Investment



Scheme as offering fixed rental returns of between 8% and 10% per annum over a ten-year period. The purchase price for each residential unit was set at £46,950.00. The investment was further portrayed as a “hassle-free income” entailing “no involvement in property management” and featuring a “fully flexible resale option.”

[6] The structure of the Investment Scheme involved a number of interrelated companies which collectively formed what was referred to as the “Alpha Group of Companies”. The directors and shareholders of these companies included Nicholas Spence and Derek Kewley. These entities included:

- (a) Alpha Developments (Bradford 2) Ltd (“Alpha Development”);
- (b) Alpha Properties (Bradford) Ltd (“Alpha Bradford”);
- (c) A1 Alpha Properties (Leicester) Limited (“A1”); and
- (d) Horton Road Management Company Ltd (“Horton Management”).

[7] Pursuant to the Investment Scheme, the freehold title to the Scholar’s Village property was transferred to Alpha Development. Thereafter, Alpha Development granted a 250-year head lease to Alpha Bradford, which constituted what is called the “Superior Lease”. Upon the plaintiff’s acquisition of her units, Alpha Bradford was to assign the Superior Lease to her. Simultaneously, the plaintiff’s individual units would be sublet to A1 under a 10-year lease, referred to as the “Underlease”. Then, Horton Management was to be appointed as the management company responsible for overseeing the residence.

[8] Prior to committing to the investment, the plaintiff sought legal advice. Acting on Delia’s recommendation, the plaintiff engaged the law firm of MRL to act on her behalf in the transaction. Specifically, she instructed the 1st defendant, who at the material time was a practising solicitor of the Courts of England and Wales as well as an advocate and solicitor of the High Court of Malaya. The 1st defendant was also regulated by the Solicitors Regulation Authority (“SRA”) of England and Wales.

[9] The plaintiff and the 1st defendant held their first meeting towards the end of September 2016. Subsequently, the plaintiff formally appointed MRL as her legal representative by executing a letter of appointment. The letter was, however, backdated. The appointment letter was accompanied by MRL’s Standard Terms of Appointment as Solicitor and Counsel.

[10] Following this initial engagement and based on the legal advice provided by the 1st defendant, the plaintiff proceeded to purchase four residential units in the Investment Scheme. The units purchased were designated as Units A2E, A2F, A3E and A3F (“Four Units”). The total consideration paid for the Four Units amounted to £198,320.00.



[11] The plaintiff successfully completed the purchases, and she was registered, between October 2017 and January 2019, as the legal proprietor of the Four Units. For a period of approximately two years thereafter, the plaintiff received the rental returns as promised in the promotional materials.

[12] However, during the third quarter of 2018, the Investment Scheme began to unravel. The rental payments, which had previously been paid consistently, began to decline and eventually ceased.

[13] Sometime in early October 2018, it came to light that Alpha Development had sold the freehold title to the Scholar's Village property to Premier Ground Rents Limited. The sale was carried out at a significant undervalue, namely at £500,000.00. This disposal was executed without notifying the plaintiff or other investors and without affording them a right of first refusal.

[14] Following the collapse of the Investment Scheme, CSI Properties convened a town hall meeting in January 2019 in Malaysia to address concerns raised by the affected investors. In February 2019, A1 was placed into administration. Two members of Quantuma LLP ("Quantuma") were subsequently appointed as administrators of A1.

[15] The plaintiff later discovered that the Investment Scheme could fall within the definition of a "collective investment scheme" ("CIS") under s 235 of the English Financial Services and Markets Act 2000 ("FSMA"). If that is the case, the Investment Scheme would be unlawful unless the Alpha Group of Companies had been authorised under the FSMA to promote or operate such a scheme.

[16] On 27 September 2024, the High Court of England and Wales delivered judgment in *4VVV Ltd & 434 Ors v. Nicholas Spence & 12 Ors* [2024] EWHC 2434. In that decision, the court held that the schemes marketed and sold by the Alpha Group of Companies, including the Scholar's Village Investment Scheme, constituted unregulated collective investment schemes. The court further held that none of the Alpha Group of Companies had obtained the requisite authorisation under the FSMA. Accordingly, the companies were found to be in breach of s 19(1) of the FSMA.

[17] The plaintiff now alleges that the defendants acted negligently by failing to advise her that the Investment Scheme could potentially constitute a CIS. She further alleges that the defendants failed to inform her that the guaranteed rental returns were not legally enforceable and that the contractual arrangements entered into involved significant legal risks. The plaintiff contends that had she been properly advised on these matters, she would not have proceeded with the investment.



Analysis And Findings

The Scope Of The Defendants' Retainer And Duty

[18] The defendants contend that their retainer was limited in scope. The defendants argue that their engagement did not extend to advising the plaintiff on commercial, financial or other non-legal risks arising from the contemplated transaction. In support of this position, the defendants rely on the Qualification clause contained in MRL's Standard Terms of Appointment. This clause expressly provides that MRL will not be liable for any inherent commercial, financial or other risks associated with the contemplated transaction and further clarifies that MRL's investigations would not include any investigations into tax, financial or accounting matters.

[19] The defendants further submit that the 1st defendant acted in the capacity of a conveyancing solicitor. The defendants argue that her professional responsibility was confined solely to the legal process of acquiring title to the Four Units. According to the defendants, this duty did not extend to assessing whether the investment was high-risk or whether it constituted a collective investment scheme regulated under the FSMA.

[20] Respectfully, I am not persuaded by these arguments. The scope of a solicitor's duty cannot be determined in a vacuum. It must be assessed in the context of the entire retainer and the surrounding circumstances in which the legal services were rendered. The solicitor's duty is not limited merely to what is expressly stated in the engagement letter. It is shaped by the nature of the transaction, the client's vulnerability and the reasonable expectations of the client based on the circumstances.

[21] In *Mulpha Kluang Maritime Carriers Sdn Bhd v. Philip Koh Tong Ngee & Ors* [2015] MLRHU 1362, the High Court referred to the decision of the Court of Appeal in *Megat Najmuddin Megat Khas & Ors v. Perwira Habib Bank Malaysia Bhd* [2003] 1 MLRA 505 and held that a solicitor has a duty to warn the client of anything unusual or anything that might hinder the client from obtaining the full benefit of the contract entered into. The court in *Mulpha Kluang Maritime Carriers (supra)* further observed that this duty is not confined to matters where specific advice is sought. A solicitor must take proactive steps to advise the client on any material legal risks that a reasonably competent solicitor exercising due skill and diligence would foresee.

[22] In *Messrs Yong & Co v. Wee Hood Teck Development Corp Ltd (1)* [1984] 1 MLRA 165, the Federal Court observed that although the solicitor's duty arises from the contractual terms of the retainer, it is an incident of that duty that the solicitor must consult the client on any matter involving doubt unless such matters fall clearly within the discretion conferred upon the solicitor. The solicitor is also under a duty to keep the client informed to the extent necessary to ensure informed decision-making.



[23] In the present case, the plaintiff signed the Appointment Letter dated 17 September 2016, notwithstanding that it was executed on 30 September 2016. Together with MRL's Tax Invoices dated 11 November 2016, the scope of services to be rendered was expressly described. The services included "advising" the plaintiff in relation to the purchase of the property, reviewing and approving the Sale and Purchase Contract, examining all documents provided by the seller's solicitors, raising pertinent enquiries and reporting to the plaintiff.

[24] More importantly, MRL's Standard Terms of Appointment stated that MRL will bring to the client's attention any material legal issues or concerns identified by them (MRL) on the information given. When this clause is read in conjunction with the outlined scope of work, it becomes evident to my mind that the defendants had an obligation to advise the plaintiff on all material legal issues. This necessarily included the risk that the Investment Scheme could fall within the ambit of a CIS under the FSMA.

[25] This position is further supported by the 1st defendant's own testimony during cross-examination. When asked whether it was her duty to consider whether the Investment Scheme could potentially be a collective investment scheme, the 1st defendant responded in the affirmative. This admission reflects a recognition on the part of the 1st defendant that the potential classification of the scheme as a CIS was a material legal issue that she was bound to consider.

[26] It is also material that the 1st defendant had dual qualifications. She was not only an advocate and solicitor of the High Court of Malaya but also a practising solicitor of the Courts of England and Wales. The plaintiff engaged her in that capacity with the understanding that the transaction was governed exclusively by English law. Accordingly, the 1st defendant was subject to the regulatory obligations and professional standards applicable to solicitors practising in England and Wales.

[27] I therefore find that the defendants' duty under the retainer extended beyond mere conveyancing formalities. It included the obligation to advise the plaintiff on all material legal risks associated with the Investment Scheme. This encompassed the risk that the scheme might constitute an unregulated CIS under the FSMA, the legal implications of the contracts entered into and the enforceability of the promised returns.

Failure To Advise On Unregulated CIS

[28] It is not in dispute that the 1st defendant did not advise the plaintiff on the possibility or risk that the Investment Scheme might constitute an unregulated CIS under the FSMA. The issue for determination is whether such omission amounts to a breach of her duty of care.

[29] Section 235 of the FSMA defines a "collective investment scheme" as "any arrangements with respect to property of any description, including



money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income”.

[30] For a scheme to fall within the ambit of s 235 of the FSMA, two elements must be satisfied. They are as follows:

- (a) firstly, the investors must not have day-to-day control over the management of the property. This is provided for under s 235(2) of the FSMA,
- (b) secondly, either the contributions of the investors and the returns are pooled or the property is managed as a whole by or on behalf of the operator of the scheme. This is provided for in s 235(3) of the FSMA.

[31] The plaintiff’s expert, Mr John Virgo, provided a considered opinion that the Investment Scheme satisfied both limbs of the statutory definition. He opined that the scheme would therefore amount to an unregulated CIS within the meaning of the FSMA. This opinion has since been vindicated by the judgment of the English High Court in *4VVV Ltd (supra)*, which held that the schemes promoted by the Alpha Group of Companies, including Scholar’s Village, were indeed unregulated CIS.

[32] The 1st defendant testified that she had considered the unregulated CIS issue during the course of her engagement. The 1st defendant maintained that she formed the view that the scheme did not constitute an unregulated CIS, and on that basis, did not advise the plaintiff of this issue.

[33] However, there is no contemporaneous documentary evidence to support her position. There is no written note, checklist, internal memorandum or recorded analysis of her evaluation of the scheme against the statutory elements of an unregulated CIS. Notably, the defendants’ own expert, Mr Barry Coulter, conceded under cross-examination that there was, in his words, “enough for there to be an alarm or alarms” in respect of the unregulated CIS issue.

[34] In *Financial Conduct Authority v. Asset Land Investment Plc* [2016] UKSC 17, the United Kingdom Supreme Court clarified that when determining whether an arrangement constitutes a CIS under the FSMA, the analysis is not confined to the contractual documents. The court must consider the arrangements in their entirety. The arrangements include not only contractual or other legally binding arrangements but any understanding shared between the parties to the transaction about how the scheme would operate, whether legally binding or not. His Lordship, Lord Sumption explained as follows:



“91. A collective investment scheme means, as s 235(1) provides, “arrangements” of the prescribed description. Subsections (1) to (4) all describe the characteristics that the relevant “arrangements” must have if the resultant scheme is to qualify as a collective investment scheme. “Arrangements” is a broad and untechnical word. It comprises not only contractual or other legally binding arrangements, but any understanding shared between the parties to the transaction about how the scheme would operate, whether legally binding or not. It also includes consequences which necessarily follow from that understanding, or from the commercial context in which it was made. In these respects, the definition is concerned with substance and not with form. It is, however, important to emphasise that it is concerned with what the arrangements were and not with what was done thereafter.”.

[35] In the present case, promotional materials such as the Investor Report, the Investment Summary and the Payment Schedules formed part of the overall arrangements of the scheme. These materials described the investment as “hassle-free” and involving “no involvement in property management”, suggesting that investors would not exercise day-to-day control over the management of the property. In my considered view, these documents should have been considered by the 1st defendant in assessing whether the scheme fell within the scope of an unregulated CIS.

[36] The 1st defendant acknowledged during cross-examination that she was aware of the existence of these promotional materials. However, she admitted that she did not take them into account in her evaluation. She explained that she did not consider it to be within her duty to comment on or provide advice in relation to the contents of those documents as they were not supplied by the seller’s solicitors and the plaintiff had not specifically instructed her to review them.

[37] With respect, I find this position untenable. As a solicitor qualified to practise in England and Wales, the 1st defendant ought to have been aware that promotional materials are a relevant and necessary consideration when evaluating whether a scheme constitutes an unregulated CIS under the FSMA. This duty is well established, including the decision in *Asset Land Investment (supra)*.

[38] I find the failure to consider those materials, particularly when they formed the basis on which the scheme was marketed to the plaintiff, amounts to a serious departure from the standard of care expected of a reasonably competent solicitor. This failure is further compounded by the fact that the SRA had raised red flags and issued specific warnings regarding such schemes.

[39] The SRA had, as early as 2013, issued circulars and guidance notes alerting solicitors to the legal and regulatory risks associated with unregulated CIS and similar investment structures. These warnings emphasised the need for caution and careful scrutiny. I hold the considered view that although the 1st defendant claimed to have kept herself informed of developments in this



area of law, her omission to identify the potential regulatory risk or, at the very least, to advise the plaintiff that such a risk existed, demonstrates that she did not give adequate regard to these professional warnings.

[40] I accept the opinion of the plaintiff's expert, Mr John Virgo, that any evaluation of a property transaction which is part of an investment scheme must necessarily include an assessment of whether the scheme is legally compliant. This is essential for all clients, regardless of their level of sophistication. I therefore find that the 1st defendant's failure to undertake a proper evaluation of the regulatory status of the scheme and to advise the plaintiff accordingly constitutes a clear breach of her duty of care.

Failure To Comply With SRA Guidance

[41] The evidence adduced in this case establishes that the SRA had issued a series of guidance documents and warnings relevant to investment schemes. These notices were publicly accessible and expressly directed at solicitors practising in England and Wales. These included:

- (a) the Warning Notice on High Yield Investment Fraud dated 10 September 2013;
- (b) the SRA Warning Notice on Investment Schemes and Client Account dated 21 September 2016; and
- (c) the Warning Notice on Solicitors and Investment Fraud issued in December 2016.

[42] Each of these notices contained specific warnings about investment schemes exhibiting characteristics closely resembling those of the present Investment Scheme. Such features included the promise of returns significantly higher than those typically available through conventional investments, the marketing of the scheme with the apparent endorsement or involvement of a law firm and the structure of the scheme involving the lease of individual rooms with purportedly guaranteed returns.

[43] The notices also emphasised that solicitors must not take unfair advantage of investors, particularly where those investors are laypersons unfamiliar with complex financial structures. The notices further advised solicitors to refrain from becoming involved in investment schemes which they did not fully understand or had not independently verified. Importantly, solicitors were reminded of their professional obligation to provide full and proper advice to clients, particularly where the transaction in question differed markedly from a standard property conveyance.

[44] During cross-examination, the 1st defendant conceded that it was incumbent upon solicitors to keep themselves updated on SRA communications and developments regarding collective investment schemes. She further admitted that she was aware of the existence of the aforementioned SRA warnings.



[45] Notwithstanding this awareness, the 1st defendant did not alert the plaintiff to the risks associated with the Investment Scheme. She failed to provide any advice concerning the regulatory warnings or the applicability of those concerns to the plaintiff's proposed investment.

[46] I find that the 1st defendant's failure to adhere to the SRA guidance and warnings constitutes an additional and independent breach of her duty of care. As highlighted by the plaintiff's expert, Mr Mark Adcock, compliance with the professional guidance issued by the SRA is not discretionary. Such compliance is mandatory, and failure to comply may expose a solicitor to regulatory sanctions for misconduct.

[47] The 1st defendant's omission to heed these warnings, despite being aware of them, was not only a dereliction of duty owed to her client but also a failure to meet the professional standards expected by her regulator. Her inaction rendered her open to legitimate criticism, both from the plaintiff and from the SRA.

Failure To Advise On Legal Effect And Risks

[48] The plaintiff contends that the 1st defendant failed to advise her on the true nature, legal effect and inherent risks of the contractual documents she executed as part of the Investment Scheme. Specifically, the plaintiff alleges that the 1st defendant did not inform her that the executed agreements were inconsistent with the representations made in the promotional materials and further, that the so-called "rental guarantees" had no legal force or enforceability.

[49] The evidence before this Court confirms that the marketing materials distributed in relation to the Investment Scheme consistently referred to rental guarantees. These materials expressly promised fixed rental returns of between 8% and 10% per annum for a 10-year duration.

[50] However, a review of the contractual documentation reveals that these guarantees were not incorporated into the legal agreements. During cross-examination, the 1st defendant conceded that the executed contracts did not reflect the promises contained in the marketing brochures.

[51] The 1st defendant further admitted that she was aware that the plaintiff was acquiring the units as an investment. She acknowledged that the promise of a fixed and guaranteed return was a central factor in the plaintiff's decision-making process. Despite having this knowledge, the 1st defendant failed to advise the plaintiff that the legal agreements did not in fact, contain any provisions guaranteeing the rental income that had been promoted to her. No warning was given to alert the plaintiff to the discrepancy between the marketing promises and the contractual terms.



[52] I find this omission to be a serious failure on the part of the 1st defendant. As a solicitor acting for a client in a property investment transaction, she owed a clear duty to advise the plaintiff on the legal implications of the documents being signed. This duty necessarily included drawing attention to any material inconsistencies between the representations relied upon by the client, such as those found in the promotional materials, and the actual contents of the contracts. By failing to provide this advice, the 1st defendant allowed the plaintiff to proceed with the transaction under a fundamental misapprehension, namely, that the investment carried with it an enforceable guarantee of rental income.

[53] This failure is rendered even more egregious when viewed against the factual background revealed in the *4VVV (supra)* judgment. That decision recorded that, as early as July 2013, a lawyer had raised concerns about the enforceability of the “guaranteed income” promised in similar schemes. That lawyer queried whether the management company responsible for providing the 10-year income stream could simply be shut down thereby rendering enforcement near enough impossible. These concerns were publicly known and should have informed the 1st defendant’s risk assessment in this case.

[54] The plaintiff’s expert, Mr Mark Adcock, emphasised that this transaction did not constitute a conventional conveyancing matter. He observed that the transaction was burdened with, in his words, “layers of truncated title, a complex structure and dependency on third party income”. He further opined that solicitors are trained to anticipate potential failure in such schemes and are under a professional duty to advise their clients accordingly. In his view, the 1st defendant should have cautioned the plaintiff about the real possibility of non-performance and the legal difficulties in enforcing any projected returns.

[55] I accept the expert evidence of Mr Adcock. I find that the 1st defendant failed to advise the plaintiff on the true legal nature and effect of the contracts. She also failed to alert the plaintiff to the associated legal risks, particularly the lack of enforceability of the alleged rental guarantees. This failure constitutes a breach of the duty of care owed by a reasonably competent solicitor acting in such circumstances.

Conflict Of Interest

[56] The plaintiff further alleges that the 1st defendant and MRL were placed in a position of conflict of interest. This, according to the plaintiff, compromised their ability to provide legal advice that was unbiased, full, frank and independent, as required by their professional obligations.

[57] The evidence adduced at trial establishes that, at the material time when the plaintiff first met the 1st defendant, MRL was on the solicitor panel of CSI Properties. MRL had already acted for approximately twenty other purchasers involved in the same Investment Scheme. Ultimately, the total number of purchasers for whom MRL acted in respect of this scheme exceeded fifty.



The majority of these purchasers had been introduced to MRL through CSI Properties. This referral arrangement constituted a significant and ongoing source of legal work and income for the defendants.

[58] The close relationship between MRL and CSI Properties is further evidenced by several features of their interaction. The evidence shows that CSI Properties maintained copies of MRL's engagement letter and standard terms of appointment. These documents were regularly provided by CSI Properties to prospective purchasers. In addition, representatives from CSI Properties were involved in discussing MRL's legal fees with the prospective investors. Such conduct demonstrates a relationship of unusual proximity between the marketing agent and the legal advisers, raising legitimate concerns about independence and professional detachment.

[59] The SRA had issued guidance cautioning solicitors against acting in circumstances where a conflict of interest might arise. The guidance emphasised the importance of professional independence and identified scenarios involving referral arrangements or panel firm status as potential red flags.

[60] The SRA specifically warned that where a solicitor or law firm is recommended by a party with a commercial interest in the transaction, such as a scheme promoter, there is a risk that the solicitor's advice may be, or be perceived to be, compromised. The guidance further advised solicitors to disclose such circumstances to their clients and to assess whether continuing to act would be appropriate.

[61] I find that the 1st defendant failed to disclose to the plaintiff the nature of MRL's ongoing relationship with CSI Properties. She also failed to explain how that relationship might impair or affect MRL's ability to provide impartial and independent legal advice.

[62] I find that this omission deprived the plaintiff of the opportunity to make an informed decision as to whether she wished to proceed with MRL as her legal representative. In failing to make this disclosure, the 1st defendant breached her professional duty of care to the plaintiff. The existence of the conflict and the failure to disclose it, constitutes a further and distinct basis upon which professional negligence is established.

Causation And Loss

[63] The defendants contend that even if a breach of duty is established, such breach did not cause the plaintiff's loss. The defendants argue that the failure of the Investment Scheme was attributable to the manner in which it was implemented rather than to the fact that it constituted a CIS under the FSMA. In addition, the defendants assert that the plaintiff failed to mitigate her loss. The defendants further argue that their liability, if any, is contractually limited to the amount of legal fees paid by the plaintiff.



[64] In response, the plaintiff testified that had she been properly advised of the regulatory risk that the Investment Scheme could fall within the definition of an unregulated CIS under the FSMA, she would not have proceeded with the investment. She also stated that she would have withdrawn from the transaction had the 1st defendant alerted her to any of the material risks involved, particularly the absence of legally enforceable guarantees for the promised returns. Notably, this evidence was not tested or challenged during cross-examination and therefore remains uncontroverted.

[65] I accept the plaintiff's evidence in this regard. Her testimony is consistent, credible and supported by the surrounding circumstances. I find it entirely reasonable that the plaintiff, being a retiree who was deploying a substantial portion of her savings into this investment, would not have proceeded had she been properly advised of the significant legal and regulatory risks involved.

[66] As to the measure of loss, the plaintiff paid a total sum of £198,320.00 for the acquisition of the Four Units. According to her evidence, which I accept, those units have since depreciated in value to the point that they are now worth substantially less and, in practical terms, have little or no resale value. In addition to the capital loss, the plaintiff continues to incur liabilities in the form of service charges and ground rent, notwithstanding the collapse of the investment and the cessation of any income stream.

[67] I do not accept the defendants' contention that their liability is contractually limited to the legal fees paid, namely £3,200.00. The relevant limitation clause, found in MRL's Standard Terms of Appointment, states as follows:

"Our liability for services shall not exceed the quantum of fees paid to us under our engagement."

[68] However, this clause does not contain any express language excluding or limiting liability for negligence. As observed in *Premier Hotel Sdn Bhd v. Tang Ling Seng* [1995] 4 MLRH 511, a clause that purports to exclude liability for professional negligence must refer specifically to "negligence" or use language to that effect, such as "however caused". The present clause does not satisfy that requirement.

[69] Moreover, the Court of Appeal in *Clearpath Marketing Sdn Bhd v. Malayan Banking Berhad* [2019] 4 MLRA 461 referred and adopted the view held by Her Ladyship the Honourable Nallini Pathmanathan J (now FCJ) in *ML Breadworks Sdn Bhd v. Malayan Banking Berhad* [2012] MLRHU 940 and reaffirmed that an exclusion or limitation clause must be fairly and reasonably brought to the attention of the client to be effective. There is no evidence before this court that the plaintiff's attention was ever directed to the limitation clause. Nor is there any indication that she was advised that the clause would operate to limit or exclude the defendants' liability even in the event of professional negligence. In the absence of such disclosure, the clause cannot be relied upon by the defendants to avoid or reduce liability.



[70] I therefore find that the breach of duty by the defendants directly caused the plaintiff's financial loss. I further find that the defendants' liability is not contractually limited to the legal fees paid.

Conclusion

[71] For the reasons set out above, I find that the defendants, acting through the 1st defendant, have breached the duty of care owed to the plaintiff in multiple respects. The breaches include:

- (a) the failure to advise the plaintiff of the legal risk that the Investment Scheme could constitute an unregulated CIS under the FSMA;
- (b) the failure to comply with guidance and professional obligations issued by the SRA;
- (c) the failure to explain the true nature, legal effect and associated risks of the contractual documents executed by the plaintiff; and
- (d) the failure to disclose a material conflict of interest arising from the defendants' ongoing relationship with CSI Properties.

[72] I find that these breaches materially influenced the plaintiff's decision to proceed with the investment. But for the defendants' failures, the plaintiff would not have entered into the transaction. As a direct consequence, the plaintiff suffered substantial financial loss.

[73] I therefore allow the plaintiff's claim for the following prayers:

- (a) prayer 32.1,
- (b) prayer 32.2,
- (c) prayer 32.3,
- (d) prayer 32.4 at the rate of 5% per annum,
- (e) prayer 32.5, and
- (f) prayer 32.6.

I further order that the defendants shall pay the plaintiff the sum of RM80,000.00 as costs.

