

MALAYSIA
IN THE HIGH COURT IN MALAYA AT JOHOR BAHRU
IN THE STATE OF JOHOR DARUL TAKZIM
CIVIL SUIT NO. JA-22NCvC-205-11/2019

5

BETWEEN

FUTURE LUB SDN. BHD.
(Company No.: 935272-D)

10

...PLAINTIFF

AND

15

1. TAN WEN CHEN @ LAU WEN CHEN
(SINGAPORE NRIC No: S2000529G)

20

2. NG GEAK INN
(SINGAPORE NRIC No: S2075613F)

...DEFENDANTS

JUDGMENT

25

[1] In this case the plaintiff claimed against the defendants as follows:

“a) An order for Declaration that the Sale and Purchase Agreement dated 04.05.2012 is still subsisting;

30

b) An order for Specific Performance of the Sale and Purchase Agreement dated 04.05.2012 within 14 days from the date of order;

c) An order that, if the Defendants fail, neglect or refuse to sign the transfer form and/or other relevant forms and documents within 14 days from the

35



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal

date of this Order, then, the Registrar or the Senior Assistant Registrar be authorised to sign the transfer form and other related documents for the transfer of the said Property (GERAN No: 130636, LOT 78754, Mukim of Pulai, District of Johor Bahru, Johor) to the Plaintiff;

5

d) Agreed liquidated damages of RM125,000.00;

e) General damages;

10 f) Interest on the sum of RM125,000.00 at the rate of 5% per annum from 25.11.2019 until the date of full realization;

15 g) An order that the Defendants shall ~~indemnify~~ pay the Plaintiff ~~against any loss or damage~~ a sum of RM314,676.00 being special damages and refund the deposit in the event that the transfer of the said Property to the Plaintiff could not be effected;

h) Costs; and

20 i) Such further relief or other relief that this Honourable Court may deem fit.”

[2] The defendants counterclaimed against the plaintiff as follows:

25 “a) a declaration that the said Agreement dated 4 May 2012 is invalid and not applicable;

30 b) an order that the private caveat entered upon the said Property held under GERAN 130636 LOT 78754 Mukim Pulai, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) by the Plaintiff (namely Future Lub Sdn. Bhd.) is cancelled/removed entirely;



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal

- 5 c) an order that the Plaintiff (namely Future Lub Sdn. Bhd.) is entirely barred from entering any new/other private caveat upon the said Property held under GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor);
- 10 d) declaration that the Plaintiff (namely Future Lub Sdn. Bhd.) is *holding over* the said Property held under GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor);
- 15 e) an order that the Plaintiff (namely Future Lub Sdn. Bhd.) forthwith surrender vacant possession of the said Property held under GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) to the Defendants;
- 20 f) (i) the Plaintiff forthwith pays to the Defendants damages for the period of holding over for the said Property held under GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) amounting to RM10,000.00 a month calculated from the month of December 2017 for vacant possession of the said Property is delivered to the Defendants;
- 25 (ii) in the alternative, the Plaintiff forthwith pays the Defendant damages for the period of holding over for the said Property held under GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) amounting to RM6,000.00 a month calculated from the month of December 2017 for vacant possession of the said Property is delivered to the Defendants;
- 30



- 5
- g) declaration that the Plaintiff's claim here has been filed out of time and is time barred;
 - h) the Defendants' other damages and losses be assessed by the Deputy Registrar and paid by the Plaintiff to the Defendants;
 - i) costs and interest; and
 - 10 j) such other orders, relief and directions which are appropriate and beneficial."

[3] After hearing the matter, I made the following orders:

- 15
- "1) Tuntutan Plaintiff ditolak dengan kos.
 - 2) Tuntutan Balas Defendan-Defendan adalah dibenarkan iaitu:
 - a) deklarasi bahawa Perjanjian tersebut yang bertarikh 4hb Mei 2012 adalah tidak sah dan tidak terpakai;
 - 20 b) perintah supaya semua kaveat persendirian yang dimasukkan ke atas Hartanah tersebut yang dipegang di bawah GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) oleh Plaintiff (iaitu Future Lub Sdn. Bhd.) dibatalkan sama sekali;
 - 25 c) perintah supaya Plaintiff (iaitu Future Lub Sdn. Bhd.) dihalang sama sekali daripada memasukkan sebarang kaveat persendirian baru/lain ke atas Hartanah tersebut yang dipegang di bawah GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor);
 - 30



- 5 d) deklarasi bahawa Plaintiff (iaitu Future Lub Sdn. Bhd.) adalah memegang - lebih (*holding over*) Hartanah tersebut yang dipegang di bawah GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor);
- 10 e) perintah supaya Plaintiff (iaitu Future Lub Sdn. Bhd.) dengan serta-merta menyerahkan milikan kosong Hartanah tersebut yang dipegang di bawah GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) kepada Defendan-Defendan;
- 15 f) Plaintiff membayar kepada Defendan-Defendan secara serta-merta gantirugi bagi jangkamasa memegang-lebih (*holding over*) Hartanah tersebut yang dipegang di bawah GERAN 130636 LOT 78754 Mukim Pulau, Daerah Johor Bahru, Johor (No. 24, Jalan Perdagangan 5, Taman Universiti, 81300 Skudai, Johor) sebanyak RM6,000.00 sebulan dikira daripada bulan Disember 2017 sehingga penyerahan milikan kosong Hartanah tersebut kepada Defendan-Defendan;
- 20
- 25 g) deklarasi bahawa tuntutan Plaintiff di sini adalah difailkan di luar had masa dan adalah *time barred*;
- 30 h) gantirugi dan kerugian lain Defendan-Defendan ditaksir oleh Timbalan Pendaftar dan dibayar oleh Plaintiff kepada Defendan-Defendan. Gantirugi dan kerugian ini wajib mengambil kira kos ubahsuai Hartanah tersebut yang dibelanjakan Plaintiff tetapi kos ini wajib dibuktikan oleh Plaintiff melalui bukti dokumentari;
- i) Kos sebanyak RM25,000.00 hendaklah dibayar oleh Plaintiff kepada Defendan-Defendan tertakluk kepada fee alokatur; dan



- j) faedah pada kadar 5% setahun dikira daripada tarikh writ saman
iaitu 25 November 2019.”

5 [4] The plaintiff being dissatisfied, has filed an appeal to the Court
of Appeal against the said decision.

Brief background

- 10 “a) Vide a sale and purchase agreement (“the SPA”) dated 4th May 2012,
the Defendants had agreed to sell and the Plaintiff had agreed to buy a
factory located in Taman Universiti, Johor Bahru (“the said Property”) for
a sum of RM1,250,000.00.
- 15 b) In what would otherwise be a normal S&P property transaction, the very
unusual feature here was that the Defendants were never the registered
proprietors of the said Property.

See the special conditions in the SPA

- 20 c) At all material times even until today, the actual registered owner of the
said Property was *one Pan Vista Sdn Bhd*.
- d) In light of that, the Special Conditions were drafted to reflect the fact that
upon the said Property’s transfer from *Pan Vista* to the Defendants would
the Defendants then be obligated to transfer the said Property to the
25 Plaintiff.

The Registration of the 1st Transfer

- 30 e) Pursuant to the *Special Conditions*, the transfer from *Pan Vista* to the
Defendants was specifically defined as:

“the Registration of the 1st Transfer”



- f) It becomes clear that *the Registration of the 1st transfer* amounts to the *contingent event* which sets off the other conditions and covenants as regards how the said Property shall be eventually transferred from the Defendants to the Plaintiff and its accompanying payment obligations.

5

- g) In other words, the said SPA is a *contingent/conditional agreement* where the obligation to transfer the said Property to the Plaintiff only arises if *the registration of the 1st transfer* occurs.

10 ***The 1st Transfer and time limit***

- h) It is not in dispute that the 1st Transfer from *Pan Vista* to the Defendants has never occurred even up to the date of these submissions.

- 15 i) There is also a time limit for the 1st Transfer to occur and this appears in Clause 3 of the *Special Conditions* as follows:

20 *“In the event the Registration of the 1st Transfer cannot be effected within Seven (7) months from the date hereof (“the Perfection Date”), the Purchaser shall, after the Perfection Date unless it has been extended by mutual consent in writing, be at liberty to duly terminate this Agreement...”*

- 25 j) Therefore, the 1st Transfer must be carried out within 7 months from the date of the SPA (4th May 2012) and this period expired on 3rd December 2012.

30 ***Extension of Time***

- k) There is also no dispute that an extension of time was granted as regards the 1st Transfer to occur and this extension of another 7 months was until the 4th July 2013.



- l) On this issue of time, it is notable that in Clause 9 of the SPA, time is stated as being *of the essence of the contract*.

The plaintiff never pleaded that time was not of the essence or that time has become at large.

Effect of failure to complete the 1st Transfer

- m) In Clause 3 of the *Special Conditions*, it is stated that if:

“...the 1st Transfer cannot be effected within 7 months from the date hereof, the Purchaser shall, after the Perfection Date unless it has been extended by mutual consent in writing, be at liberty to duly terminate this Agreement...”

- n) Thus the operative time period as contained in Clause 3 refers to the period as being “...within 7 months from the date hereof.”

Whether limitation period has set in for the plaintiff's claim

- o) This action was filed on the 25th November 2019 and this is some four months past the period of 6 years calculated from the 4th of July 2013.

Whether limitation has set in and what period of limitation is applicable

- p) A party's pleaded cause of action determines what limitation period is applicable. This is trite because the time periods set out in the Limitation Act 1953 are governed by the cause of action applicable.

- q) In the Plaintiff's Statement of Claim, its case is pleaded entirely on the basis of Breach of Contract. There are no pleadings about any trust or recovery of land (both of which allow longer periods of limitation).



- r) In addition, the prayers sought by the Plaintiff are for a declaration that the SPA is subsisting and for an order of Specific Performance. It is also trite that these types of prayers are premised upon contractual claims.”

5 **[5]** The Limitation Act 1953, Act 254 in section 6 states:

“Limitation of actions of contract and tort and certain other actions

10 6. (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say—

- 15 (a) actions founded on a contract or on tort;
(b) actions to enforce a recognisance;
(c) actions to enforce an award;
(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.”

20 **[6]** In the Federal Court case of **TOH PUAN D HERYATI BT ABDUL RAHIM v LAU BAN TIN & Anor [2020] 2 MLJ 706**, the facts were:

25 “The appellant was one of two shareholders of a company which had applied to the state authority to be granted a piece of land (‘the land’). On 20 June 2000, the shareholders entered into an agreement (‘the SSA’) to sell 60% of the company’s shareholding to the respondents. The SSA, which involved the sale of the appellant’s entire shareholding, contained a clause (‘section 2.05’) which stated that in consideration of the sale of the shares plus a further RM1 payable by the appellant, the respondents would ‘cause the company to transfer’ the land to her absolutely. At the time the SSA was executed, the title for the land was not yet issued. It was only issued in 2003 and when the appellant did a



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal

search on the land in December 2005, she discovered that the land was initially registered in the name of the company before being transferred to the first respondent ('Lau'). In January 2006, the appellant sent a letter, enclosing a cheque for RM1, to the respondents requesting them to transfer the land to her in compliance with section 2.05. There was no response from the respondents and the appellant did nothing until September 2014 when her solicitors issued a letter of demand to the respondents, again requesting that they comply with section 2.05. At the time the letter of demand was issued, the appellant was aware that Lau had transferred the land to third parties. As there was no response to her letter of demand, the appellant applied to the High Court for an order that the respondents register the land in her name; alternatively, that they pay her damages, as assessed by the court, for their breach of section 2.05.

It was held by the Federal Court:

"[24] Upon considering the nature of the plaintiff's claim and the facts and circumstances of this case, we conclude that the plaintiff's claim is not a claim for recovery of land. Her claim was for the breach of the undertaking by the defendants under section 2.05 of the SSA. Her claim is in effect a claim for breach of contract for which the limitation period is six years. Her claim is therefore barred by the Limitation Act 1953."

[7] The issue of limitation was, with respect, not decided conclusively by the Court of Appeal when the said court decided to allow the appeal against striking out made by the defendants herein. The court merely said that they found there were issues to be tried and sent the matter back to the High Court.



[8] “Contingent contract”:

“32. A “contingent contract” is a contract to do or not to do something, if some event, collateral to the contract, does or does not happen.

5

ILLUSTRATION

A contracts to pay B RM10,000 if B's house is burnt. This is a contingent contract.”

10 **[9] Enforcement of contracts contingent on an event happening:**

“33. (a) Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

15

(b) If the event becomes impossible, such contracts become void.

ILLUSTRATIONS

20

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

25

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

30

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.”

[10] When contracts become void which are contingent on happening of specified event within fixed time:



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal

“36. (1) Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible.”

5

[11] In the case of JAAFAR BIN IBRAHIM v GAN KIM KIN [1985] 2 MLJ 24, the facts were:

10

“In this case the respondent, the registered owner of a piece of land, agreed to transfer a half-share in the land to the appellant, if he could obtain approval of the conversion and subdivision of the land from the State Authority of Negri Sembilan by December 31, 1977. Such approval was not obtained before that date and the respondent relied on the provision in the Agreement that "thereupon the agreement shall become null and void and of no effect". The approval was only obtained on July 18, 1980. The appellant claimed specific performance of the agreement and other ancillary reliefs. The learned trial judge dismissed the appellants' claim as he held that the agreement was a conditional or contingent contract and as the deadline for performance of the contingent condition had lapsed, the agreement was null and void and the appellant had no claim against the respondent. The appellant appealed.”

15

20

It was held by the Supreme Court:

25

“Though the word "condition" or "conditional" or "contingent" was not used in the agreement, on the true construction of the document we held that the learned Judge did not err in law or in fact in concluding the 1975 agreement to be a conditional contract or to be technically exact a contingent contract as defined in our Contracts Act, 1950. Since the deadline for performance of the contingent condition had been fixed then fulfilment of the

30



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal

obligation on or before December 31, 1977 must be strictly adhered to and the time should not be extended by reference to equitable principles (see *Aberfoyle Plantations Ltd v Khaw Bian Cheng* AIR 1964 SC 978). In our judgment this was a case where time was not merely of the essence of the contract but fulfilment of the promise by the appellant to obtain the approval on or before December 31, 1977 was a condition precedent of the whole contract. As such section 56 of the Contracts Act did not apply and the proper provision should be section 36(1) which provides:—

"Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible."

In the present appeal the uncertain event was the approval for subdivision by the State authority. The respondent promised to transfer her half-share in the land to the appellant if the approval was obtained within two years of the agreement. The event had not happened by the deadline and therefore under section 36(1) the contract became void. The dismissal of the appellant's claim for specific performance was accordingly correct in law."

[12] The decision of the Supreme Court was affirmed on further appeal to the Privy Council. See **JAAFAR BIN IBRAHIM v GAN KIM KIN [1987] 2 MLJ 109 Privy Council.**



[13] The said SPA has become void-

“Section 36 is applicable to the facts of our case because the obligation of the Defendants to transfer the Property to the Plaintiff is contingent/conditional upon:

(a) the happening of a *specified uncertain event*, namely the registration of the 1st transfer, and

(b) that event must occur within a fixed time (the 7 + 7 months period). As such, it is submitted that the said SPA has become void for the non-occurrence of the contingent event.”

[14] Based on what has been adumbrated above, I dismissed the plaintiff’s case and consequently allowed the defendants’ counterclaim with costs.

[15] *Ergo cadit quaestio.*

Dated **21st February 2023**

-Signed-
(ASLAM B ZAINUDDIN)
Judge
High Court in Malaya
Johor Bahru

Note: Grounds of judgment is subject to correction of typographical errors, grammatical mistakes and editorial formatting, if any.



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal

Counsel for the Plaintiff:

Tok Jun Wee

5
Messrs. Tok & Co
Advocates & Solicitors
No. 8A(1st Floor), Jln Suria 19
Taman Putera
10 81100 Johor Bahru
[TCH/S/L/713/19(R)]

15 **Counsel for the Defendants:**

Chang Tau Sian

Messrs. Henry Soong & Chang
20 Advocates & Solicitors
Unit 12.13A, 12th Floor, Menara TJB
No. 9 Jln Syed Mohd Mufti
80000 Johor Bahru
[CTS/1657-20]



S/N 6qW4xkTHFUGmIDQrciU5Cg

**Note : Serial number will be used to verify the originality of this document via eFILING portal