

**DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU
DALAM NEGERI JOHOR DARUL TAKZIM, MALAYSIA
GUAMAN NO. JA-22NCVC-25-02/2016**

Antara

JR JOINT RESOURCES HOLDINGS SDN BHD
(NO SYARIKAT: 462917-T)

PLAINTIF

Dan

1. TECHNOCHASE SDN BHD
(NO SYARIKAT: 358371-V)
2. MD SALLEH BIN BADRI
(NO K/P: 520323-01-5311)
3. MOHD ZAINI BIN MD LAJIS
(NO. K/P: 740101-01-6335)

DEFENDAN-DEFENDAN

.....

**DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU
DALAM NEGERI JOHOR DARUL TAKZIM, MALAYSIA
GUAMAN NO. JA-22NCVC-26-02/2016**

Antara

AMINUL ISLAM BIN ABDUL NOR
(No. K/P: 670508-79-5039)

PLAINTIF

Dan

1. TECHNOCHASE SDN BHD
(NO SYARIKAT: 358371-V)
2. GOOI YU HOH
(NO K/P: 720702-04-5103)

DEFENDAN-DEFENDAN

.....

**DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU
DALAM NEGERI JOHOR DARUL TAKZIM, MALAYSIA
GUAMAN NO. JA-22NCVC-27-02/2016**

Antara

JR JOINT RESOURCES HOLDINGS SDN BHD
(NO SYARIKAT: 462917-T)

PLAINTIF

Dan

1. JALALUDIN BIN SULAIMAN
(NO K/P: 680728-01-5515)

2. GOOI YU HOH
(NO K/P: 720702-04-5103)

3. NORASIAH BINTI SULAIMAN
(NO K/P: 760324-01-7012)

DEFENDAN-DEFENDAN

.....

JUDGMENT

CHOO KAH SING

Judge

High Court Johor Bahru

Date: 11.11.2018

Introduction

[1] This judgment serves as the reasons for the decisions for 3 suits which were jointly heard. For ease of reference, the 3 suits will be referred to in this judgment respectively as shown in *Table A* below:

Case Number:	Reference:
JA-22NCVC-25-02/2016	Suit 25
JA-22NCVC-26-02/2016	Suit 26
JA-22NCVC-27-02/2016	Suit 27

Table A

[2] The parties' counsels in all 3 suits had agreed that the 3 suits be heard together because they involved some common parties, facts and evidence of similar nature, except those specifically mentioned and referred to in the parties' pleadings respectively.

Parties' Counsels

[3] *Table B* below depicts the parties' counsels respectively for all 3 suits.

Suit No.	Plaintiff's counsel	1 st Defendant's counsel	2 nd Defendant's counsel	3 rd Defendant's counsel
25	Sukhdev Kaur	Hanif Hassan	Hanif Hassan	Hanif Hassan
26	Sukhdev Kaur	Hanif Hassan	CS Lim	
27	Sukhdev Kaur	Hanif Hassan	CS Lim	

Table B

[4] The parties have gone through a full trial. On 21.8.2018, this Court, in broad terms, made the following orders in the 3 suits:

- (i) The plaintiffs' claims in all 3 suits be dismissed with costs.
- (ii) The 2nd defendant's counterclaim in Suit 26 be dismissed without costs.
- (iii) This Court ordered that the 1st defendant in Suit 25 refund a sum of RM4,100,658.00 to the plaintiff in Suit 25.

(**Note:** For item (iii), the sum to be refunded to the plaintiff is in respect of all 3 suits. There was a calculation error in respect of the said sum which will be explained in the later part of the judgment).

[5] The reasons for the decisions of this Court for all 3 suits are set out as below.

The Background Facts

Introduction to the Respective Parties

[6] The plaintiffs in Suits 25 and 27 are the same party, i.e. JR Joint Resources Holdings Sdn. Bhd. (hereinafter 'JR Joint Resources').

[7] The plaintiff in Suit 26 is Aminul Islam Bin Abdul Nor (hereinafter 'Aminul Islam') who is the President and Chief Executive Officer (CEO) of JR Joint Resources. The *Table C* below depicts the plaintiffs in the 3 suits.

Suit No	Plaintiff
25	JR Joint Resources
26	Aminul Islam
27	JR Joint Resources

Table C

[8] The 1st defendant in both Suits 25 and 26 is the same party, i.e. Technochase Sdn. Bhd. (hereinafter 'Technochase'); whereas, the 1st defendant Jalaludin Bin Sulaiman (hereinafter 'Jalaludin') in Suit 27 is the majority shareholder and managing director of Technochase. The *Table D* below depicts the main defendants in the 3 suits.

Suit No	1 st Defendant
25	Technochase
26	Technochase
27	Jalaludin

Table D

The Background Facts that Led to the 3 Suits

[9] On the surface, the facts seem to be convoluted. However, upon examination, the salient facts of the 3 suits could be condensed and explained as below.

[10] Aminul Islam and Jalaludin were friends. Upon a request made by Jalaludin to Aminul Islam, Aminul Islam had advanced a personal loan to Jalaludin.

[11] Jalaludin was unable to pay back Aminul Islam. Jalaludin then made an offer to Aminul Islam to pay back the personal loan by way of set-off of his personal properties and his company Technocase's properties. Aminul Islam was reluctant to accept the offer initially, but later agreed to it.

[12] The total value of all the set-off properties was higher than the personal loan sum. As such, Aminul Islam and/or JR Joint Resources had to top-up the difference.

[13] Aminul Islam and Jalaludin then entered into a series of sale and purchase agreements for the transfer of Jalaludin's and Technochase's properties.

[14] Aminul Islam had used his company JR Joint Resources as purchaser for the properties in Suits 25 and 27; whereas Aminul Islam was named as the purchaser for the properties in Suit 26.

[15] In the midst of the sale and purchase transactions, a dispute arose between Aminul Islam and Jalaludin. On one hand, Aminul Islam and his company JR Joint Resources contended that they had paid in full the purchase prices for the purchase of all the properties to Jalaludin and/or Technochase. On the other hand, Jalaludin and/or Technochase denied that Aminul Islam and/or JR Joint Resources had fully settled the purchase prices of all the properties.

[16] Jalaludin and Technochase averred that Aminul Islam and/or JR Joint Resources had failed to pay in full the purchase prices of the

properties, as such, they had terminated the sale and purchase agreements, and they were free to sell the said properties to 3rd parties.

[17] Technochase had then sold two of its properties; one to the 2nd defendant, and another one to the 3rd defendant in Suit 25. Technochase also had sold one of its properties to Mr. Gooi Yu Hoh (hereinafter 'Mr. Gooi') in Suit 26. With regard to Jalaludin, he had sold one of his properties to Mr. Gooi in Suit 27.

[18] Based on the above disputes, Aminul Islam and JR Joint Resources brought the 3 suits against Jalaludin personally and against Jalaludin's company Technochase, and also against the 2nd and 3rd defendants in Suit 25 and Mr. Gooi in Suits 26 and 27.

[19] The 2nd and 3rd defendants in Suit 25 and Mr. Gooi in Suits 26 and 27 had contended that they were bona fide purchasers for value of the properties which they had purchased from Jalaludin and/or Technochase respectively, and they had no knowledge of the earlier sale and purchase agreements entered into between the Aminul Islam and/or JR Joint Resources and Jalaludin and/or Technochase.

[20] Aminul Islam and/or JR Joint Resources claimed for specific performance against Jalaludin and/or Technochase to transfer the properties to them or in the alternative Jalaludin and/or Technochase to pay damages in lieu of specific performance.

[21] With regard to the 3rd defendant, Norasiah Binti Sulaiman, in Suit 27, the plaintiff had abandoned its claim against her.

[22] In gist, the above are the broad facts of the 3 suits.

[23] For ease of reference, the parties will hereinafter be referred to as follows:

- i. Aminul Islam and JR Joint Resources will collectively be referred to as '**the Plaintiffs**';
- ii. Jalaludin and Technochase will collectively be referred to as '**the Defendants**';
- iii. The 2nd and 3rd defendants in Suit 25 and Mr. Gooi as the 2nd defendant in both Suits 26 and 27 will collectively be referred to as '**the 3rd parties**'.

Peculiar Facts in the 3 Suits

[24] It is pertinent to note that there are two peculiar facts in all 3 suits.

[25] The first peculiar fact is that in so far as the Plaintiffs' cases (Suits 25, 26 and 27) are concerned, JR Joint Resources and Aminul Islam were treated as if they were a single entity. This is because the Plaintiffs pleaded that they, without specifying who paid for what, had paid a total sum of RM9,567,525.92 (hereinafter 'the total paid sum' which is based on the payment vouchers adduced in court, except exhibits P8 and P13; see para [84] below) to the Defendants for the purchase of the Defendants' properties in all 3 suits.

[26] The Plaintiffs had adduced a total of 37 payment vouchers (see Exhibits P1 to P40, except Exhibits P8 and P13, and P39) evidencing the payments of the total paid sum. It is to be noted that the Plaintiffs had relied on the same Exhibits, i.e. the payment vouchers, in all the 3 suits to prove their cases.

[27] The Plaintiffs could not specify which payments were for which particular properties and for which particular suit. It is because of this peculiar fact that the plaintiffs wanted all 3 suits be heard together.

[28] The second peculiar fact is that the Defendants also treated themselves as if they were a single entity. Although they had argued Technochase was a separate legal entity and Jalaludin was an individual; the manner in which the Defendants had defended their cases were as if they were one.

The Findings of This Court

Suit 25

[29] In Suit 25, JR Joint Resources, the plaintiff, averred that it had entered into a sale and purchase agreement dated 31.7.2009 (hereinafter 'SPA – Suit 25') with Technochase for the purchase of 7 properties for a total sum of RM420,000.00. Each property was valued at RM60,000.00.

[30] JR Joint Resources asserted that it had paid in full the total purchase price of RM420,000.00 to Technochase. However, it is observed that JR Joint Resources was not sure when it actually settled

fully the total purchase price. JR Joint Resources merely claimed that it had settled the full purchase price before the expiry of 3 months from the date of the sale and purchase agreement in October 2009.

[31] The 7 properties were not transferred to JR Joint Resources, although JR Joint Resources claimed that it had settled the full purchase price since October 2009.

[32] About 6 years later, on 24.8.2015 Technochase sold one of the 7 properties to MD Salleh Bin Badri (DW2 / 2nd defendant), and the said property was registered in the name of DW2 on 22.9.2015.

[33] On 28.8.2015, Technochase also sold another property out of the 7 properties to one Mohd Zaini Bin MD Lajis (DW3 / 3rd defendant), and the said property was registered in the name of the DW3 on 5.11.2015.

[34] Technochase contended that the actual sale price of the 7 properties was RM1,260,000.00, instead of RM420,000.00 as claimed by JR Joint Resources. Each property was valued at RM180,000.00, instead of RM60,000.00.

[35] On one hand, JR Joint Resources adduced a set of SPA dated 31.7.2009 (P50) evidencing the sale and purchase price of the 7 properties was RM420,000.00. On the other hand, Technochase adduced a set of SPA which is the same as P50, but the page (schedule page) reflecting the sale price was different, and it stated the sale price for the 7 properties was RM1,260,000.00.

[36] JR Joint Resources's representative Aminul Islam (PW1) admitted that he had signed / initialled on all the pages of P50, including the page reflecting the sale price of the 7 properties as RM1,260,000.00.

[37] There were two sets of facts before this Court. One revealed the sale price for the 7 properties was RM420,000.00, and the other set of facts revealed the sale price was RM1,260,000.00. Hence, the issue for this Court to determine, as agreed by the parties, is which agreement, i.e. the agreement with the price of RM420,000.00 or RM1,260,000.00 is valid and enforceable.

[38] The burden lies with the plaintiff to prove its case since it was the plaintiff who had brought the suit. According to Aminul Islam, he said that initially the parties agreed that the sale price for the 7 properties was RM1,260,000.00. As such, he had initialled on the page reflecting the sale price of the 7 properties as RM1,260,000.00.

[39] Aminul Islam explained that Jalaludin then approached him and told him that Technochase would not want to pay so much Real Property Gain Tax (RPGT) for the sale of the 7 properties. As such, he agreed that the sale price for the 7 properties to be valued at RM420,000.00, that is, RM60,000.00 each. It was on that understanding the sale price was changed from RM1,260,000.00 to RM420,000.00. It was on this basis that JR Joint Resources contended that the first sale price of RM1,260,000.00 was no longer applicable, and the actual sale price became RM420,000.00.

[40] Technochase's version was that Aminul Islam requested the sale price to be stated as RM420,000.00 in the sale and purchase

agreement, instead of RM1,260,000.00. The reason was that JR Joint Resources, as the purchaser, would not want to pay so much chargeable stamp duty for the transfer of the said 7 properties. On that basis, Jalaludin had instructed his staff Nor Aishah Binti Osman (DW4) to exchange the relevant page in the sale and purchase agreement to reflect the sale price for the 7 properties as RM420,000.00, and used the same document to submit for valuation of stamp duty at the Lembaga Hasil Dalam Negeri (LHDN).

[41] This Court is inclined to reject JR Joint Resources' version of the story. First, it is not logical that JR Joint Resources in order for Technochase to avoid paying RPGT, Technochase would willing to agree to lower the selling price of its 7 properties from RM1,260,000.00 to RM420,000.00.

[42] If JR Joint Resources' story was true, it means Technochase agreed to forgo a sum of RM840,000.00 to avoid paying RPGT of the 7 properties ($\text{RM1,260,000.00} - \text{RM420,000.00} = \text{RM840,000.00}$).

[43] If based on maximum 30% chargeable real property gain tax for the sum of RM1,260,000.00 being imposed on Technochase (as a company), it would amount to RM378,000.00 ($\text{RM1,260,000.00} \times 30\% = \text{RM378,000.00}$). This calculation is based on an assumption Technochase acquired the 7 properties for free (i.e. 100% gain) and disposed them within 3 years from the date it acquired the said 7 properties.

[44] In such a scenario, the chargeable RPGT of RM378,000.00 (on maximum scale) is still less than the purported sum of RM840,000.00

that it allegedly forgo. No reasonable vendor would agree to sell his property at a substantially low price just to avoid RPGT if the amount discounted is more than the taxable amount.

[45] Secondly, in the event JR Joint Resources through Aminul Islam agreed to a purchase price of RM1,260,000.00, and acted on Jalaludin's request to avoid paying higher RPGT, by stating a purchase price of RM420,000.00 in the sale and purchase agreement so as to help Technochase to avoid paying a higher RPGT, this would mean that the actual intended selling price was RM1,260,000.00. On a balance of probabilities, Technochase's version of the story was more probable than JR Joint Resources' story – the parties stated a lower purchase price was because it would attract a lower chargeable stamp duty.

[46] Thirdly, JR Joint Resources asserted that it had paid in full the purchase price (whether it was RM420,000.00 or RM1,260,000.00) in October 2009, but did not give a reasonable explanation why JR Joint Resources did not take action against Technochase from 2009 until 2016. Why JR Joint Resources wait until February 2016 to bring this action against Technochase? JR Joint Resources through Aminul Islam informed the Court that he had left everything to Jalaludin to handle. The reason given by Aminul Islam was not convincing and reasonable. No reasonable purchaser would take so long to enforce its right after a lapse of more than 6 years.

[47] Lastly, there was no cogent evidence that JR Joint Resources had paid in full the purchase price (whether RM420,000.00 or RM1,260,000.00) because all the payment vouchers (see Exhibits P1 to P40, except Exhibits P8 and P13) adduced by JR Joint Resources do

not prove the payments were in fact for the purchase of the 7 properties, the payments could be for other properties.

[48] Based on the above, this Court is of the considered view that it would be more probable than not that the sale and purchase price of the 7 properties was for a sum of RM1,260,000.00. This Court is also of the considered view that JR Joint Resources (as the plaintiff in Suit 25) could not prove that it had paid in full the purchase price. This is because JR Joint Resources failed to convince this Court its payment vouchers reflected the payments of the purchase price for the 7 properties. This Court finds that JR Joint Resources had failed to prove its case in Suit 25 on a balance of probabilities.

[49] Consequent to the above findings, JR Joint Resources' claims against the 2nd and 3rd defendants must fail. Hence, it was unnecessary to decide the issue whether they were bona fide purchasers or not.

Suit 26

[50] Suit 26 concerns two sale and purchase agreements which were entered into between Aminul Islam, as purchaser, and Techonochase, as the vendor.

[51] The first sale and purchase agreement dated 31.7.2009 (hereinafter 'the first SPA - Exhibit P51') was for two properties, namely, GM 1375 Lot 3491 and GM 711, Lot 3492, both at Mukim Plentong, Daerah Johor Bahru, Negeri Johor.

[52] The second sale and purchase agreement was also dated 31.07.2009 (hereinafter 'the second SPA - Exhibit P52), and it was for a property known as HSD 12284, Lot 2894, Mukim Api-Api, Daerah Pontian, Negeri Johor

[53] Aminul Islam's version of the story was that the sale and purchase price for two properties in the first SPA was RM3,500,000.00, and as for the property in the second SPA, the sale and purchase price was RM1,800,000.00.

[54] Aminul Islam contended that he had paid in full the purchase prices in the two sale and purchase agreements (the first SPA and second SPA), and that Technochase failed to transfer the three properties to Aminul Islam.

[55] Technochase's version of the story was that the actual sale and purchase price of the first SPA was RM7,000,000.00, and it was not RM3,500,00.00 as contended by Aminul Islam. Technochase's version of the first SPA was adduced and marked as Exhibit D53.

[56] As for the second SPA, Technochase admitted that the sale and purchase price for the property was indeed RM1,800,000.00.

[57] Technochase contended that for the first SPA, Aminul Islam had failed to pay in full the balance purchase price (based on RM7,000,000.00) upon the expiry of the completion date and/or the extended completion date. Hence, the first SPA was terminated.

[58] With regard to the second SPA, Technochase took the position that it was Aminul Islam who had repudiated the second SPA when he failed to pay the stamp duty charges of RM48,000.00 to LHDN.

[59] Technochase admitted that in both first SPA and second SPA, it had received from Aminul Islam 10% of the sale and purchase prices which amounted to RM880,000.00 (RM700,000.00 + RM180,000.00).

[60] The issue to be determined by this Court in Suit 26 was whether the sale and purchase price for the first SPA was RM3,500,000.00 or RM7,000,000.00, and whether the Plaintiffs had repudiated the second SPA?

[61] Aminul Islam contended that the reason the sale price was reduced from RM7,000,000.00 to RM3,500,000.00 was upon the request of Jalaludin as Technochase did not want to pay so much RPGT for the sale of the two properties in the first SPA. Again, this reason alluded by Aminul Islam is hard to believe.

[62] If it holds any truth, it means Technochase was willing to slash half the price for the two properties, i.e. give discount of RM3,500,000.00 to Aminul Islam just to avoid paying a lesser sum for RPGT. In the event the full scale of taxable amount for the RPGT was imposed on Technochase, it would only amount to RM2,100,000.00 (RM7,000,000.00 x 30%).

[63] The maximum taxable amount is still lower than the purported discounted amount. No reasonable vendor would agree to slash the sale price by half just to avoid RPGT. It just does not make sense. It

would be more probable that a lower sale and purchase price was recorded so as to avoid paying a higher transfer stamp duty fee.

[64] With regard to the second SPA, Technochase contended that Aminul Islam failed to pay the transfer stamp duty as such the agreement was terminated. The property in the second SPA was later sold to the 2nd defendant Mr. Gooi. In so far as the plaintiff's evidence is concerned, this Court is of the considered view that the plaintiff Aminul Islam failed to adduce proper evidence in support of his case that the chargeable transfer stamp duty was paid. There was also no evidence in support of the plaintiff's case that the balance purchase sum (i.e. RM1,620,000.00) was fully settled. There was no specific evidence to prove that payments were in fact made toward the balance purchase price of this particular property.

[65] This Court, therefore, finds that Aminul Islam had failed to prove his case for Suit 26 on a balance of probabilities.

Suit 27

[66] In this Suit 27, JR Joint Resources, as the purchaser, entered into a sale and purchase agreement dated 31.07.2009 with Jalaludin, as the vendor, for the sale and purchase of 8 properties for a total sum of RM811,500.00 (based on JR Joint Resources' version).

[67] Jalaludin's version of the story was that the total sale and purchase price for the 8 properties was RM2,035,000.00.

[68] As far as JR Joint Resources was concerned, its claim in this Suit 27 was only in relation to 5 properties, the other 3 properties were considered as already transferred to JR Joint Resources. One of these 5 properties was later sold to the 2nd Defendant Mr. Gooi by Jalaludin.

[69] JR Joint Resources adduced a sale and purchase agreement that stated the sale price for the 8 properties was RM811,500.00 (P54) in support of its contention. Jalaludin also adduced another sale and purchase agreement that stated the sale price for the 8 properties was RM2,035,000.00 (D61). Both parties admitted they had signed the two conflicting documents.

[70] Again, JR Joint Resources alluded that the reason why there was a lower sale and purchase price for the 8 properties was because Jalaludin did not want to pay a higher chargeable tax for RPGT. Again, this Court could not accept this illogical explanation as if it is true, Jalaludin would have discounted a total sum of RM1,223,500.00 (RM2,035,000.00 – RM811,500.00) for the 8 properties. It does not make any sense for a prudent vendor to sell a greatly discounted price just to avoid paying RPGT.

[71] After applying the same reasoning and making the findings as it did in the two earlier suits in this suit, this Court finds that JR Joint Resources had failed to prove its case for Suit 27 on a balance of probabilities.

The Overall Findings For All 3 Suits

[72] Based on the above findings, this Court holds that the Plaintiffs have failed to prove their cases in all 3 suits.

[73] This Court is inclined to accept the Defendants' version of the story as more probable than the Plaintiffs' story. The Defendants' story is the purchase price for the properties were the higher sums as mentioned earlier, and that the Plaintiffs had failed to pay the full purchase price for the properties, hence, the transfers of the properties were not effected. The Defendants argued that they were entitled to forfeit the deposits for all the agreements as provided in the agreements because the Plaintiffs had breached the agreements.

[74] This Court holds that the Defendants were entitled to forfeit the deposit sum (10%) for each of the agreements. The total forfeited sum would be RM1,209,500.00. The said forfeited sum is tabulated as in *Table E* below:

Suit	Sale and Purchase Price	10%
25	RM1,260,000.00	RM 126,000.00
26	RM7,000,000.00 RM1,800,000.00	RM 700,000.00 RM 180,000.00
27	RM2,035,000.00	RM 203,500.00
	Total	RM1,209,500.00

Table E

[75] As for the payments allegedly made by the Plaintiffs to the Defendants, this Court finds that the payment vouchers and other documents adduced by the Plaintiffs that prove payments were made by the Plaintiffs or Amirul Islam's related company JR Global Technology Sdn Bhd. to the Defendants are those listed in *Table F* below:

Exhibit	Date	Amount (RM)	Remarks – proof of payment	see Exhibits bundle at page(s)
P20A	7.4.2009	700,000.00	see cheque deposit receipt and the corresponding transaction as showed in the bank statement of the account of JR Global Technology SB	20-21
P21A	10.4.2009	300,000.00	see instruction letter to CIMB Bank to pay Technochase	22-23
P40	14.4.2009	510,158.00	see JR Global Technology's bank statement and the amount was transferred to an account which belonged to Technochase	64
P22A	23.7.2009	500,000.00	See instruction letter to CIMB Bank to pay Technochase	25-26
P23A	28.7.2009	850,000.00	See instruction letter to CIMB Bank to pay Technochase	27-28
P24A	3.8.2009	900,000.00	See instruction letter to CIMB Bank to pay Technochase	29-30
P25A	4.8.2009	200,000.00	See instruction letter to CIMB Bank to pay Technochase	31-32
ID26A	5.8.2009	300,000.00	See payment voucher which corresponds with statement of account	33-34
ID27	11.8.2009	100,000.00	See payment voucher, PB remittance application form and bank statement of JR Joint Resources	36-38
P28	11.8.2009	100,000.00	See payment voucher and MBB application for remittance form	39-40
P29	14.8.2009	50,000.00	See payment voucher and bank statement which corresponds with the clearing of cheque # MBB 384344	41-42
P30	18.8.2009	200,000.00	See payment voucher, MBB cheque 407836 and MBB application remittance form which the beneficiary was Technochase	43-45

P31	28.8.2009	300,000.00	See payment voucher, MBB cheque 407938 and MBB application remittance form which the beneficiary was Technochase	47-49
P33	4.9.2009	200,000.00	See payment voucher and instruction letter	52-53
P34	7.10.2009	100,000.00	See payment voucher and instruction letter to CIMB Bank	54-55
P35	13.11.2009	50,000.00	See payment voucher and instruction letter to CIMB Bank	56-57
	Total amount paid to Technochase	5,360,158.00		

Table F

[76] The Defendants' witnesses' evidence could not refute that the money was paid to them, whether it came from JR Joint Resources or JR Global Technology Sdn Bhd.

[77] The Defendants' witness Jalaludin testified that he could not remember his own company's bank account number. The Court observes that the witness had selective memory when giving oral evidence in Court about the payments made by or on behalf of the Plaintiffs. Hence, this Court was not convinced that the payments as stated in *Table F* were not received by the Defendants.

[78] In any event, the Defendants had argued that the Plaintiffs failed to settle the full purchase price for all the properties. The Court observes that the total amount paid by the Plaintiffs was insufficient to satisfy the full purchase price for all the properties, i.e. RM12,095,000.00.

[79] Based on the Court's findings that the Plaintiffs had only proven a sum of RM5,360,158.00 was paid to the Defendants, and that the

Defendants were only entitled to forfeit a sum of RM1,209,500.00, therefore, based on s. 71 of the Contracts Act 1950, the Defendants ought to return the excess amount paid which amounts to RM4,150,658.00 (RM5,360,158.00 - RM1,209,500.00).

[80] On 21.8.2018, when this Court pronounced its decisions for the 3 Suits, this Court ordered a sum of RM4,100,658.00 to be returned to JR Joint Resources by Technochase. This Court made an error of calculation in the pronouncement. The correct amount to be refunded to JR Joint Resources ought to be RM4,150,658.00, instead of RM4,100,658.00.

[81] This Court finds that there were some alleged payments which were **not** proved by the Plaintiffs to have been made to the Defendants. Those payments are as listed in *Table G* below:

Exhibit	Date	Amount (RM)	Remarks	see Exhibits bundle at page(s)
P1	2009	228,000.00	Cash voucher; no evidence it was received by Technochase or Jalaludin; no date stated	1
P2	2009	200,000.00	Cash voucher; no evidence it was received by the Defendants; it stated for levy refund payment.	2
P3	2009	62,000.00	Cash voucher, no evidence the Defendants received the payment; purpose of payment stated as salary (loan)	3
P4	16.3.2009	300,000.00	Petty cash voucher; no evidence it was received by Technocase	4
P5	23.6.2009	100,000.00	Petty cash voucher; no evidence that Jalaludin or	5

			Technochase received the money	
P6	3.9.2009	300,000.00	Petty cash voucher; no evidence the amount was received by Technochase	6
P7	11.9.2009	60,000.00	Payment voucher; no evidence it was received by Technochase; it stated 10,000 for Dato Zain.	7
P10	15.9.2009	350,000.00	Petty cash voucher; no evidence the amount was received by Technochase	10
P32	3.9.2009	300,000.00	Payment voucher issued by one Gold Base Setters (M) Sdn Bhd; there was no evidence Technochase received the amount	50
P11	20.10.2009	500,000.00	Petty cash voucher; no evidence to show that Technochase received cash of half a million;	11
P12	26.10.2009	400,000.00	Payment voucher; no supporting document to show the money was t/t into Technochase account	12
P9	7.10.2009	350,000.00	Payment voucher; no evidence Technocase received the money	9
P14	19.11.2009	10,000.00	Petty cash voucher; no evidence that Jalaludin or Technochase received the money	14
P19	20.11.2009	40,000.00	Payment voucher; no supporting document that the amount was t/t into Technochase	19
P15	18.12.2009	200,000.00	Payment voucher; no evidence that Technochase received the cash	15
P16	3.5.2010	104,660.00	Petty cash voucher; no evidence Technochase received the cash	16
P17	15.8.2010	500,000.00	Petty cash voucher; no evidence Technochase received the cash	17
P18	12.11.2010	32,707.92	Petty cash voucher; no evidence Technochase received the amount	18
P36	1.12.2009	50,000.00	Payment voucher; not supported by clear evidence	58-59
P37	3.2.2010	100,000.00	Payment voucher; it seems like a cash deposit,	

			but the documentation in support of the payment was not clear	60-61
P38	3.2.2010	30,000.00	Payment voucher; payment by way of PBB cheque; but unable to show that it was made payable to Technochase although it was stated in the payment voucher it was paid to Technochase; the bank statement could not establish the amount was paid to Technochase	62-63
	Total	RM4,217,367.92		
	Less	RM10,000.00 paid to Dato Zain (see P7)		
	Final unproved amount	RM4,207,367.92		

Table G

[82] The total amount which was not proven by the Plaintiffs to have been paid to the Defendants is RM4,207,367.92. The payment vouchers adduced by the Plaintiffs were mostly not supported by any evidence that Technochase or Jalaludin had received the money.

[83] This Court observes that there were several transactions in which the purported payments were paid in large sum of cash (see P11, P15, P17). It is illogical for such huge sums of money to be paid out in cash, yet, there was no proof of payment was received by the Defendants or any acknowledgement of receipt on the payment vouchers by the Defendants. Who would pay half a million cash to someone without proper documentation such as evidence of receipt of payment?

[84] This Court observes that if the Plaintiffs' contention that all sums including the unproved payments were actually paid to the Defendants is true, the total sum paid by the Plaintiffs to the Defendants would be RM9,567,525.92 (RM5,360,158.00 + RM4,207,367.92).

[85] However, based on the Plaintiffs' version of the story, the total amount for the purchase price for all the properties was RM6,531,500.00 (RM420,000.00 + RM3,500,000.00 + RM1,800,000.00 + 811,500.00). The Plaintiffs had adduced all the payment vouchers (proved and unproved) amounted to RM9,567,525.92 (exclude exhibits P8 and P13 because those payments were for stamping fees).

[86] The question that arises would be why would the Plaintiffs over pay a sum of RM3,036,025.92 (RM9,567,525.92 - RM6,531,500) to the Defendants? The Plaintiffs did not offer any explanation for the excess payment of RM3,036,025.92.

[87] If there was in fact overpayment, this would support the Defendants' version of the story. The total purchase price for all the properties according to the Defendants was RM12,095,000.00 (RM1,260,000.00 + RM7,000,000.00 + RM1,800,000.00 + RM2,035,000.00). Hence, the Plaintiffs had to pay RM12,095,000.00 to the Defendants. If it is true that the Plaintiffs had paid RM9,567,525.92 (proved and unproved amount) to the Defendants, there is still a shortfall of RM2,527,474.08 which was not paid based on the total purchase price of RM12,095,000.00 (the Defendants' version).

[88] This Court had considered all other evidence which is not specifically mentioned in this judgment. Those evidence could not affect

the outcome of the final findings of this Court. For example, the evidence of Ms. Fook Yneh Ming (PW2 in Suits 25, 26, 27), she merely acted under the instruction of Aminul Islam to prepare the payment vouchers and the instruction letters to the Bank to make payments to the Defendants, and the company's resolutions would not affect the ultimate findings of this Court.

Conclusion

[89] Based on the above reasoning, this Court has made the following orders:

In Suit 25

- i. The plaintiff's claim is dismissed with costs of RM30,000.00 to be paid by the plaintiff to the defendants, i.e. RM10,000.00 for each defendant;
- ii. The 1st defendant (Technochase) is to refund a sum of RM4,150,658.00 to the plaintiff (JR Joint Resources) within one month from the date of this Order;

(**Note:** the sum RM RM4,150,658.00 to be refunded by the 1st defendant to the plaintiff is for all 3 suits)

In Suit 26

- i. The plaintiff's claim is dismissed with costs of RM10,000.00 to be paid by the plaintiff to each defendant;

- ii. The 2nd defendant's counterclaim is dismissed without costs;

In Suit 27

- i. The plaintiff's claim is dismissed with costs of RM10,000.00 to be paid by the plaintiff to each defendant;

Sgd.

.....

(CHOO KAH SING)
Judge
High Court Johor Bahru

Suit 25

Counsel for the plaintiff : Sukhdev Kaur
Tetuan Shukor Baljit & Partners

Counsel for all the
Defendants : Hanif Hassan
Tetuan Hanif Hassan & Co.

Suit 26

Counsel for the plaintiff : Sukhdev Kaur
Tetuan Shukor Baljit & Partners

Counsel for the
1st Defendant : Hanif Hassan
Tetuan Hanif Hassan & Co.

Counsel for the
2nd Defendant : CS Lim
Tetuan Lim Wong & Partnes

Suit 27

Counsel for the plaintiff : Sukhdev Kaur
Tetuan Shukor Baljit & Partners

Counsel for the
1st Defendant : Hanif Hassan
Tetuan Hanif Hassan & Co.

Counsel for the
2nd Defendant : CS Lim
Tetuan Lim Wong & Partnes