

**IN THE COURT OF APPEAL OF MALAYSIA**

**(APPELLATE JURISDICTION)**

**CIVIL APPEAL NO: W-02(NCvC)(W)-281-02/2020**

**BETWEEN**

- 1. RATHNAVEL S/O PACKIRISAMY (NRIC NO: 440607-05-5235)**
- 2. THANABALAN S/O GURUSAMY (NRIC NO: 521126-05-5159)**
- 3. GANASAN S/O MUTHU (NRIC NO: 710919-05-5477)**  
**(suing on his behalf and as the Administrator of the estate of Muthu S/O Periaiah)**
- 4. KUPPUSAMY S/O MUNUSAMY (NRIC NO: 411221-05-5117)**
- 5. RAMAYAH S/O ARUMUGAM (NRIC NO: 460615-05-5065 and SIGAPPAYEE W/O RAMAYAH (NRIC NO: 470302-71-5228)**
- 6. SIVASANKARAN PILLAY S/O RAMASAMY (NRIC NO: 640815-05-5711)**  
**(suing on his behalf and as the Administrator of the estate of Ramasamy S/O Panchu Pillai)**
- 7. KANESAN S/O VELUSAMY (NRIC NO: 680511-05-5401)**  
**(suing on his behalf and as the Executor of the estate of Velusamy S/O Muthusamy Koundan)**
- 8. NAGAMA D/O LETCHUMANAN (NRIC NO: 351101-05-5188)**



9. VASUKI D/O S. RAJALINGAM (NRIC NO: 640127-08-6338)
10. PANIRSELVAM S/O MANIAM (NRIC NO: 550331-05-5281)
11. PAUNAMBAL D/O SUBRAYAN (NRIC NO: 310307-71-5160)
12. SANKARAN S/O N. NADASON (NRIC NO: 590905-05-5173)
13. SELVAMANI D/O ANGAMUTHU (NRIC NO: 580622-05-5182)
14. MUTHUSAMY S/O KALIAPPAN (NRIC NO: 440622-10-5309)
15. KATHIRAWAN S/O JEYARAMAMOORTHY (NRIC NO: 700314-05-5141)
16. SEVAGAMY AMMAL D/O ARUMUGAM (NRIC NO: 450508-10-5144)  
  
(suing on her behalf and as the Administrator of the estate of Marimuthu S/O Mannickam)
17. JEGAN S/O MARIAPPAN (NRIC NO: 751028-05-5343) and  
  
MUNIAMAMMAL D/O THIRUVETHY (NRIC NO: 451007-08-5434)
18. NEELA D/O ARUMUGAM (NRIC NO: 450911-01-5026)  
  
(suing on her behalf and as the Administrator of the estate of Rajagopal S/O Nadesan)
19. SHYAMALA DEVI D/O SUNDRAM (NRIC NO: 800511-05-5392)  
  
and  
  
VALAMUBNY D/O KALIAPPAN (NRIC NO: 520807-05-5096)
20. CHANDRASEKARAN S/O NARAYANAN (NRIC NO: 570303-05-5733)



21. VELLIAMAH D/O PERUMAL (NRIC NO: 480730-10-5126)
22. SIVA PRAKASH S/O VADIVELLOO (NRIC NO: 741014-05-5159)  
(suing on his behalf and as the Administrator of the estate of  
Vadiveloo S/O Appoo)
23. LELA PADHI D/O RAMASAMY (NRIC NO: 400419-10-5390)  
(suing on her behalf and as the Administrator of the estate of  
L. Kalathurai)
24. ATHILETCHUMY D/O NARAYANASAMY (NRIC NO: 460210-10-  
5052)
25. LOGANATHAN S/O MANICKAM (NRIC NO: 630715-05-6195)
26. S. VASUGI D/O SINNAN (NRIC NO: 641006-01-5458)
27. PADMA RAJ S/O ARUMUGAM (NRIC NO: 710727-05-5229)  
(suing on his behalf and as the Administrator of the estate of  
Arumugam S/O Iyakannu)
28. NADARAJAH S/O PALANIAPPAN (NRIC NO: 680804-05-5253)
29. NIRMALA D/O NARAYANAN (NRIC NO: 551206-05-5498)
30. CHANDARA SEGAR S/O KARUPPASAMI (NRIC NO: 631031-05-  
5321)
31. THANAPACKIAM D/O PONNUSAMY (NRIC NO: 360906-04-  
5002)



**32. PONNAMBALAM S/O ELAIATHAMBY (NRIC NO: 300214-05-5045)**  
**and THIAGARAJEN S/O PONNAMPALAM (NRIC NO: 610216-05-**  
**5595) ...APPELLANTS**

**AND**

**KOPERASI NLFCS BERHAD**

**(Registration No: 3405)**

**...RESPONDENT**

[In the matter of the High Court of Malaya in Kuala Lumpur

Civil Suit No: WA-22NCVC-561-09/2016

Between

1. Rathnavel S/O Packirisamy (NRIC No: 440607-05-5235)

2. Thanabalan S/O Gurusamy (NRIC No: 521126-05-5159)

3. Ganasan S/O Muthu (NRIC No: 710919-05-5477)

(Suing on his behalf and as the Administrator of the estate of Muthu  
S/O Periaiah)

4. Kuppusamy S/O Munusamy (NRIC No: 411221-05-5117)

5. Ramayah S/O Arumugam (NRIC No: 460615-05-5065 and  
Sigappayee W/O Ramayah (NRIC No: 470302-71-5228)



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

6. Sivasankaran Pillay S/O Ramasamy (NRIC No: 640815-05-5711)  
(Suing on his behalf and as the Administrator of the estate of Ramasamy S/O Panchu Pillai)
7. Kanesan S/O Velusamy (NRIC No: 680511-05-5401)  
(Suing on his behalf and as the Executor of the estate of Velusamy S/O Muthusamy Koundan)
8. Nagama D/O Letchumanan (NRIC No: 351101-05-5188)
9. Vasuki D/O S. Rajalingam (NRIC No: 640127-08-6338)
10. Panirselvam S/O Maniam (NRIC No: 550331-05-5281)
11. Paunambal D/O Subrayan (NRIC No: 310307-71-5160)
12. Sankaran S/O N. Nadason (NRIC No: 590905-05-5173)
13. Selvamani D/O Angamuthu (NRIC No: 580622-05-5182)
14. Muthusamy S/O Kaliappan (NRIC No: 440622-10-5309)
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18. Neela D/O Arumugam (NRIC No: 450911-01-5026)  
(Suing on her behalf and as the Administrator of the estate of Rajagopal S/O Nadesan)



19. Shyamala Devi D/O Sundram (NRIC No: 800511-05-5392) and  
Valamubny D/O Kaliappan (NRIC No: 520807-05-5096)
20. Chandrasekaran S/O Narayanan (NRIC No: 570303-05-5733)
21. Velliamah D/O Perumal (NRIC No: 480730-10-5126)
22. Siva Prakash S/O Vadiveloo (NRIC No: 741014-05-5159)  
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Vadiveloo S/O Appoo)
23. Lela Padhi D/O Ramasamy (NRIC No: 400419-10-5390)  
(Suing on her behalf and as the Administrator of the estate of L.  
Kalathurai)
24. Athileetchumy D/O Narayanasamy (NRIC No: 460210-10-5052)
25. Loganathan S/O Manickam (NRIC No: 630715-05-6195)
26. S. Vasugi D/O Sinnan (NRIC No: 641006-01-5458)
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28. Nadarajah S/O Palaniappan (NRIC No: 680804-05-5253)
29. Nirmala D/O Narayanan (NRIC No: 551206-05-5498)
30. Chandara Segar S/O Karuppasami (NRIC No: 631031-05-5321)
31. Thanapackiam D/O Ponnusamy (NRIC No: 360906-04-5002)



32. Ponnambalam S/O Elaiathamby (NRIC No: 300214-05-5045) and  
Thiagarajen S/O Ponnampalam (NRIC No: 610216-05-5595)

...Plaintiffs

And

Koperasi NLFCS Berhad

(Registration No.: 3405)

...Defendant]

**CORAM**

**LAU BEE LAN, JCA**

**MOHD SOFIAN BIN ABD. RAZAK, JCA**

**DARRYL GOON SIEW CHYE, JCA**

**JUDGMENT**

**[1]** This was an appeal against the decision of the learned High Court Judge in ordering an assessment of damages after a full trial and after having made a finding on liability.



[2] The Appellants in this case were the Plaintiffs, who had successfully obtained a decision on liability in their favour against the Respondent, the only Defendant in the High Court.

[3] This appeal raises only one main issue and that is, whether the learned trial Judge ought to have determined the quantum of damages the Respondent was liable for, at the end of the trial and upon the evidence adduced at the trial, instead of ordering a separate assessment thereafter.

## **Background**

[4] In order to assess the learned Judge's decision in making the order for the assessment of damages subsequent to the trial, the background, the Appellants' case and, particularly, the findings of the learned Judge need to be examined.

[5] The Appellants consisted of some 160 individuals. Their claim was in respect of a piece of land measuring 17.59 hectares, previously held under Grant No: 17937 Lot No: 3032 and, prior to that, under Grant No: 4010 Lot No: 715. This said land will hereinafter be referred to as the





‘Land’. The Land has since been sub-divided into separate pieces and held under various new titles issued.

**[6]** Before its acquisition, an idea was mooted that the Land be acquired jointly by several individuals. These individuals included workers and residents, including the family members of residents, in and around the Temiang Estate in Seremban. It was then agreed that the Land, when acquired, would be divided into 160 lots of approximately a quarter of an acre (approximately 10,890 sq ft) each and the remaining portion of the Land be used as common property.

**[7]** The vendor of the Land, Sumle Enterprise, however, preferred to deal with one single entity and as such the Respondent was approached to purchase the property on behalf of the intending purchasers.

**[8]** The Respondent was and is a co-operative society registered under the Co-operative Societies Act 1993 and has, among its objectives, to uplift the socio-economic and land holding status of the Indian Community in Malaysia and to provide an opportunity for land and house ownership among Indian estate workers in the country.



**[9]** The Respondent agreed and it thus came to be that the Land was acquired by the Respondent in what became known as the 'Temiang Land Scheme'.

**[10]** The participants of this Temiang Land Scheme each paid a sum of RM550.00 to the Respondent towards the acquisition of the Land with a view to each participant acquiring approximately a quarter acre of it (approximately 10,890 sq ft).

**[11]** The Appellants consisted of both the original participants themselves and individuals claiming through or on behalf of the estate of the original participants in the Temiang Land Scheme.

**[12]** The Respondent's purchase of the Land was completed and the Land transferred to the Respondent in or around 1973.

**[13]** Additional sums of monies were subsequently paid by the original participants of the Temiang Land Scheme to the Respondent, towards expenses incurred in respect of the Land.



[14] Sometime in 1980 there was a meeting among the parties and there was said to be an agreement for the land to be developed and then, thereafter, sub-divided and transferred to the participants.

[15] Sometime in 1981, it was agreed *inter alia* that the Land be developed as a housing project and the Respondent to implement this development.

[16] Several agreements were subsequently entered into between the parties and further payments made to the Respondent.

[17] In the meantime, several companies appointed by the Respondent to undertake the development of the Land failed. Ultimately, however, the development and the housing units for the Appellants were completed in 2004.

[18] Apart from the housing units for the Appellants, what was constructed on the Land were many more units of houses of varying sizes. The Appellants however, were only allotted units of houses in the region of 1,540 sq ft each, far smaller than what was originally intended i.e. land of a quarter of an acre (or approximately 10,890 sq ft) each.



[19] The Appellants also contended that the Respondent had sold and transferred many other units of houses built on the Land and had profited from this.

[20] The Appellants' primary cause of action against the Respondent was thus premised upon a breach of trust and breach of fiduciary duties by the Respondent *qua* trustee of the Land for the Appellants.

[21] It is significant to note that the reliefs sought by the Appellants in their Amended Statement of Claim were as follows:

'28.25 Wherefore the Plaintiffs claim against the Defendant the following relief:

- (a) That the Plaintiffs be indemnified by the Defendant for the *losses suffered by them in consequence of the breach of trust committed by it as found liable and as assessed by this Honourable Court,*
- (b) Alternatively, the Defendant is ordered to pay to the Plaintiffs *equitable compensation as assessed by this Honourable Court,*
- (c) Restitution of all profits made by the Defendant;



- (d) Interests on the footing of wilful default upon such indemnity or compensation and restitution at two (2) per centum (%) on monthly rests from the date of this Writ and Statement of Claim until full settlement;
- (e) Costs of this suit on an indemnity basis; and
- (f) Such further and other relief as this Honourable Court shall deem just and equitable.'

(Emphasis added)

### **The decision of the High Court**

**[22]** After a full trial, the learned Judge found for the Appellants. The learned Judge held that there was clearly an express trust created in respect of the Land and the Respondent held the Land in trust for the Appellants. The Respondent was thus a trustee of the Land and what became of the Land after it was developed with units of houses and subdivided.

**[23]** It was also held by the learned Judge that the Appellants, in receiving their respective units of houses, had not relinquished their right



to the balance of the quarter acre that they were supposed to acquire in the Land.

**[24]** The learned Judge also found that the Respondent had entered into a profit-sharing arrangement with the contractors appointed to develop the Land and the Respondent had profited from this arrangement through the sale of units of houses erected on the Land and parts of the Land to third parties. The following is stated in the learned Judge's grounds of judgment:

'This led to not only the construction of 160 houses to the participants of the scheme but also many other houses evidenced by the schedules to the Supplementary Agreement with DP and also the letter from the Negeri Sembilan PTG dated 1-11-2016. The participants were never privy to this arrangement of profit sharing between the Defendant and DP.

Apart from building and selling of houses to non-participants of the scheme, the Defendant also carted away part of the participants remaining balance of the land (after having minus the land utilised to build the 160 houses for the participants) by selling them to 3rd parties. This too, without the knowledge of the participants.

Having regard to the fact that the Defendant never paid a single cent for the Land and was entrusted with the title of the Land in a position as trustee,



the profit sharing agreement with DP, the selling of houses to non-participants of the Land scheme and the selling of the land plots to 3rd parties clearly tantamount to a breach of trust by the Defendant.'

**[25]** In the ultimate, as for damages, the learned trial judge stated as follows:

'[12] On the issue of damages, I am of the view that proper quantification of damages can only be done *vis a vis* an assessment proceedings.'

**[26]** The operative part of the judgment dated 20th January 2020 that was entered after the trial read as follows:

**'MAKA ADALAH PADA HARI INI DIHAKIMI DAN DIPERINTAHKAN**  
seperti berikut:

- (1) tuntutan Plaintiff-Plaintif dibenarkan;
- (2) bahawa Plaintiff-Plaintif berhak secara restitutsi, kesemua keuntungan yang telah diperolehi oleh Defendan dalam skim pembangunan Tanah Temaian (iaitu pembangunan atas tanah yang dahulunya dipegang dibawah Geran No. 17937 No Lot. 3032,



Mukim Seremban, Negeri Sembilan dan yang juga kini dikenali sebagai “Taman Bukit Zamrud”);

- (3) Defendan hendaklah memberikan suatu akaun sebenar akan kesemua wang yang telah diterima olehnya di bawah skim pembangunan Tanah Temiang tersebut;
- (4) kaveat-kaveat pendaftar dimasukkann terhadap geran-geran bagi lot-lot yang belum dijual dalam skim Pembangunan Tanah Temian tersebut;
- (5) jumlah pampasan kepada plaintiff-plaintif untuk ditaksir oleh Mahkamah yang Mulia ini;
- (6) Defendan membayar kepada Plaintiff -Plaintif, jumlah sebanyak RM81,311.50 sebagai kos tindakan tertakluk kepada fi alokator’

**[27]** There was an appeal filed by the Respondent against the decision of the learned Judge on the finding of liability. This was the appeal in Civil Appeal No.: W-02(NCVC)(W)-280-02/2020 (‘Appeal 280’). Appeal 280 was heard together with the instant appeal.

**[28]** Appeal 280 was allowed in part by this Court. The orders for an account and that Registrar’s Caveats be entered in respect of the lots that





have not been sold, were set aside. This was because they were not orders sought in the action and this was conceded by counsel for the Appellants. Hence paragraphs (3) and (4) of the judgment of the Court dated 20th January 2020 were set aside.

### **The issue of damages / compensation**

**[29]** It was the Appellants' contention in this appeal that the trial was not conducted in a matter that was bifurcated such that the assessment of damages or compensation would take place in a separate proceeding after the trial and determination of liability.

**[30]** As such, it was contended that the Appellants had sought, obtained and adduced into evidence at the trial, a valuation of the land to ascertain the compensation payable to each Appellant. This was the valuation conducted by one Mr Palaniappan @ Mohan, a Registered Valuer. Mr Palaniappan, testifying on behalf of the Appellants, had opined that the value of the Land as subdivided and with the buildings on it was RM43,776,336.00 and this worked out to about RM37.68 per square foot.

**[31]** In his Witness Statement, Mr Palaniappan's answer to question 6 was as follows:



'Q6. Could you please describe the nature as well as the location of the said lands?

A6: As stated at page 2 to page 4 IDB Part B Vol (the Valuation Report), the said land is located within Taman Bukit Zamrud in the locality of Jalan Temiang, Seremban which falls under the jurisdiction of Majlis Perbandaran Seremban. *The site comprises 420 sub-divided plots with individual titles issued (45 parcels of acquired terraced and bungalow plots; 44 parcels of completed single storey medium low cost terraced houses, 167 parcels of completed single storey terraced houses, 147 abandoned/vacant parcel of residential plots, 9 abandoned/vacant parcels of commercial plots, 7 vacant parcels of bungalow plots and 1 parcel of residential (apartment development plot) having a combined title land area of about 21.187 acres (922,905 square feet).*

(Emphasis added)

**[32]** Evidence was also led in the trial as to the number of lots that made up what was the Land and the names of their registered owners.

**[33]** It was thus contended by the Appellants that the Court should have proceeded to award damages to each of the Appellants based on the valuation of the Land as it currently stands.



## Finding of this Court

[34] The relief sought by the Appellants in this case included an indemnity for the losses suffered by the Appellant consequent upon the Respondent's breach of trust 'as assessed by this Honourable Court'. It also included an alternative claim for equitable compensation 'as assessed by this Honourable Court.' An assessment of the losses and compensation that the Appellants should be entitled to was thus referred to in the reliefs prayed for in the Amended Statement of Claim.

[35] In *Labuan Ferry Corp Sdn Bhd v Chin Mui Kien (trading under the name and style of Econ Focus Enterprise) & Ors and other appeals* [2018] 3 MLJ 256, Rahman Sebli JCA (as his Lordship then was) stated somewhat pointedly:

'[77] With due respect to the learned Judge, since the appellant's prayer was for damages to be assessed, the proper course for him to take would have been to proceed with assessment of damages in order that the appellant could adduce evidence to prove the quantum of damages that she claims to have suffered.'

The complaint in that case was of course quite the opposite to the Appellants' in the instant case. However, the principle ought to be the



same. An assessment was sought and, to which it may be added, no order or direction was given to the contrary by the Court.

**[36]** Also prayed for by the Appellants was a ‘Restitution of all profits made by the Defendant’.

**[37]** The orders that were made by the learned Judge after the trial that remained and were not set aside in Appeal 280, were:

- ‘(2) bahawa Plaintiff-Plaintif berhak secara restitutsi, kesemua keuntungan yang telah diperolehi oleh Defendan dalam skim pembangunan Tanah Temaian (iaitu pembangunan atas tanah yang dahulunya dipegang dibawah Geran No. 17937 No Lot. 3032, Mukim Seremban, Negeri Sembilan dan yang juga kini dikenali sebagai “Taman Bukit Zamrud”);’ and,
- ‘(5) jumlah pampasan kepada plaintiff-plaintif untuk ditaksir oleh Mahkamah yang Mulia ini;’

**[38]** The valuation of the Appellants’ expert valuer Mr Palaniappan does not include the actual profits made by the Respondent *qua* trustee. In fact, there was no evidence led as to how much the Respondent had actually profited from the sale of units of houses and the sale of the balance of the Land to third parties based on the profit-sharing scheme



with the contractor and what other profits the Respondent might have received in its capacity as trustee.

**[39]** In fact, the actual profit that the Respondent might have received could be far less than the amount the Court would arrive at, if computed and based merely on Mr Palaniappan's opinion of RM37.68 per square foot.

**[40]** It needs to be emphasised that the order of the learned Judge was for 'restitution' of the 'profit' ('Keuntungan') made by the Respondent. The amount of profit made by the Respondent cannot be determined and quantified based merely on an opinion as to the value of the Land *per* square foot. Evidence has to be led as to the actual profits made or what it might probably be, based on a multitude of factors such as the number of units of houses sold, the price they were sold for, the size of the balance of the Land that was sold, when the sale took place, to name a few.

**[41]** It would be manifestly wrong for the Appellants to premise the profit that the Respondent might have made solely on Mr Palaniappan's valuation of the Land. The amount of profit made by the Respondent is a fact that has to be established. Besides, there was evidence led that the Respondent had entered into a profit-sharing scheme with the contractor.



This would suggest that any profit made from sales would be shared between the contractor and the Respondent and the entire amount of profit made would not have accrued to the Respondent.

**[42]** Clearly, this was not an uncomplicated case of a tort committed where it is possible to assess the damages suffered by a plaintiff upon appropriate evidence being led. This was a claim in equity for breach of trust. Although breach of trust was established, the extent that the Respondent had profited financially as a trustee was not established and no doubt this had prompted the learned Judge to order an account of profits. However, an account was not a remedy sought by the Appellants in the High Court and the order was set aside in Appeal 280. As stated, there was, however, a prayer for 'Restitution of all profits' made by the Respondent.

**[43]** Hence, it therefore followed that the total compensation that the Appellants are entitled to had to be assessed. Such was also contemplated in the prayers sought in the Amended Statement of Claim. Given the circumstances, it would have been in the learned Judge's discretion to order an assessment of the compensation due to the Appellants in order to give effect to his findings and the orders made.



**[44]** It cannot be maintained that the learned trial judge was wrong or had erred in ordering an assessment of damages, given the circumstances of the case, the reliefs sought, the findings and the orders made.

**[45]** The appeal was accordingly dismissed with costs.

Dated this 12th day of April 2022

- sgd -

**(DARRYL GOON SIEW CHYE)**

**JUDGE**

**COURT OF APPEAL MALAYSIA**

**PUTRAJAYA**

**CASES CITED**

*Labuan Ferry Corp Sdn Bhd v Chin Mui Kien (trading under the name and style of Econ Focus Enterprise) & Ors and other appeals [2018] 3 MLJ 256*



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