



**IN THE HIGH COURT OF MALAYA AT SHAH ALAM**

**IN THE STATE OF SELANGOR DARUL EHSAN**

**[CIVIL SUIT NO: 22NCVC-416-08/2015]**

**BETWEEN**

**ALAGANTHRAN A/L PERUMAL**

**MOGANASUNTHARY A/P DAVID MARSEL ... PLAINTIFF**

**AND**

**LOYALTAGE SDN BHD**

**... DEFENDANT**

**GROUND OF JUDGEMENT**

- [1] The plaintiffs' cause of action against the defendant is premised on a breach of contract.
- [2] The defendant is the vendor of a property known as RTE-09, Taman Murni 2, Sepang 43900, Selangor Darul Ehsan held in title H.S.(D) 16708,P.T. No.185, Bandar Sepang, Daerah Sepang, Negeri Selangor Darul Ehsan ( 'the property').
- [3] The plaintiffs are husband and wife who entered a sale and purchase agreement ('the agreement') with the defendant to purchase this property at RM151,000.
- [4] By a letter dated 22 November 2011, the defendant terminated the agreement on the ground that the plaintiffs failed to pay up the balance purchase price of the said property.

[5] Claiming the termination to be unlawful, the plaintiffs instituted the present action seeking the following reliefs:

- a) Satu pengisytiharan bahawa Defendan telah mengingkari terma dan syarat yang terkandung di dalam Perjanjian Jual Beli yang telah ditandatangani pada 15.01.2008 di antara Plaintiff-plaintif dan Defendan;
- b) Satu dekri pelaksanaan spesifik terhadap Defendan selaku penjual hartanah mengkehendaki Defendan menyempurnakan transaksi jual beli menurut terma dan syarat yang terkandung dalam Perjanjian Jual Beli bertarikh 15.01.2008 setelah memenuhi segala syarat dan prasyarat seperti yang diperuntukkan dalam Perjanjian termasuk memperolehi segala kebenaran pindahmilik daripada Pihak Berkuasa Negeri;

Oleh yang demikian, Plaintiff-plaintif menuntut daripada Defendan seperti berikut :-

- c) Bahawa Penolong Kanan Pendaftar dan/atau Timbalan Pendaftar Mahkamah Tinggi Shah Alam diberikan kuasa untuk melaksanakan instrument pindah milik Borang 14A dan lain-lain instrument yang diperlukan untuk memindahmilik hartanah itu kepada Plaintiff-plaintif sekiranya Defendan gagal berbuat demikian;
- d) Kos prosiding ini ditanggung oleh Defendan;
- e) Lain-lain relief yang difikirkan suai manfaat oleh Mahkamah Yang Mulia ini.

[6] The defendant filed its defence and counter claimed the following: Oleh itu, Defendan menuntut daripada Plaintiff-plaintif seperti berikut :-

- a) Satu deklarası bahawa Notis Pembatalan bertarikh 22.11.2012 adalah sah dan berkuatkuasa dan Perjanjian Jual Beli bertarikh 15.01.2008 tidak boleh dikuatkuasakan lagi;
- b) Bahawa Plaintiff-plaintif menyerahkan milikan kosong Hartanah yang beralamat di No. 9, Lorong Murni 15/4, Taman Murni 43900 Sepang, Selangor yang dipegang di bawah H.S(D) 16709, P.T. No. 185, Bandar dan Daerah Sepang, Selangor (“Hartanah tersebut”) dalam masa empat belas hari (14) hari daripada tarikh Perintah ini.
- c) Bahawa Kaveat Persendirian yang didaftarkan sebagai No. Perserahan 62895/2013 bertarikh 21.10.2013 ke atas Hartanahtersebut adalah dibatalkan dengan serta merta;
- d) Bahawa Plaintiff-Plaintif dan / atau ejen Plaintiff- Plaintiff adalah dihalang daripada memasuki apa-apa kaveat persendirian ke atas Hartanah tersebut;
- e) Bahawa kos ditanggung oleh Plaintiff-Plaintif;
- f) Pampasan ditaksirkan oleh Mahkamah Yang Mulia ini dan dibayar oleh Plaintiff-Plaintif kepada Defendan ; dan
- g) Perintah-perintah lain yang difikirkan adil dan munasabah yang difikirkan perlu oleh Mahkamah Yang Mulia ini.

[7] The first plaintiff(PW1) is the sole witness for the plaintiffs as the parties had agreed to the dispensation of the 2<sup>nd</sup> plaintiff’s testimony as her evidence will be similar to the 1<sup>st</sup> plaintiff’s and it was he who had dealt with the matters pertaining to this case. The defendant called 4 witnesses comprising of a solicitor from Messrs Norhafiza and Yap, the new purchaser of this property, the defendant’s Manager (DW3) and one Janet.

- [8] In *Soo Lip Hong v. Tee Kim Huan* [2005] 4 CLJ 119, Mohd Ghazali Yusoff JCA (as he then was), in delivering the judgment of the Court of Appeal, held (at p. 135)

Specific performance is an equitable relief which may be granted by the court to enforce against the defendant the duties and the obligations which he has agreed by contract to perform. The remedy is special and extraordinary in its character and the court has the discretion either to grant it or not. However, the discretion is not an arbitrary or capricious discretion but it is to be exercised on fixed principles. The conduct of the plaintiff such as delay or laches or breach on his part or some other circumstances outside the contract may render it inequitable to grant the remedy of specific performance.

For the plaintiffs to succeed in their claim, it is incumbent on them to show that they have performed their obligations under the agreement, specifically, clause 1A, clause 4 and the Second Schedule of the same.

- [9] Clause 1A reads as follows:

**Clause 1A Condition Precedent**

1A.1 This sale and purchase herein is conditional upon Vendor obtaining the consent form the State Authority to transfer the said Property to the Purchaser (hereinafter referred to as “**the said Consent**”).

1A.2 Within **Fourteen (14) working days** after the execution of this Agreement subject to the Purchaser having paid to the Vendor a sum equal to **ten per cent (10%)** of the Purchase Price (hereinafter referred to as “**the Deposit**”), the Vendor shall at its



own costs and expenses cause an application to be made to the State Authority for the said Consent.

1A.3 If the said Consent is not obtained within **Six (6) months** from the date of this Agreement (provided that such failure is not due to the parties' wilful default), unless the parties hereto mutually agree to an extension of time for the said Consent to be obtained, the Vendor hereby undertakes to refund to the Purchaser the said Deposit and all such other sums(s) so paid by the Purchaser to the Vendor under this Agreement free of interest within **Fourteen (14) working days** from the date of notice of termination, in default of such refund as aforesaid the Vendor shall further pay to the Purchaser interest on the said Deposit calculated at the rate of **Ten per centum (10%) per annum** from the expiry of the **Fourteen (14) working days** period until the date of actual payment and refund. Upon full refund of the aforesaid sum by the Vendor to the Purchaser this Agreement shall become null and void and of no effect and neither party shall have any claim against the other save and except in respect of any antecedent breach.

Clause 4 provides:

#### **Clause 4 Schedule of Payments**

4.1 The purchase price shall be paid by the Purchaser to the Vendor by instalments and at the time and in the manner as prescribed in the **Second Schedule** hereto.

...

The Second Schedule appears as follows:



**SECOND SCHEDULE**

**(Clause 4(1))**

**SCHEDULE OF PAYMENT OF PURCHASE PRICE**

Instalments Payable	%	Amount
1.Immediately upon the signing of this Agreement	10	<b>RM15,500.00</b>
2.Within three (3) months from the date the Purchaser receive The Vendor’s written notice of confirmation that the said Consent has been obtained from the State Authority.	90	<b>RM139,500.00</b>
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	100	<b>RM155,000.00</b>
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- [10] By virtue of these terms, the plaintiffs are obliged to make payment in full at 2 stages; the first 10% of the payment at the time of the execution of the agreement i.e. 15<sup>th</sup> January 2008 and the balance RM135,000 within 3 months from the date that they are notified that the State Consent has been obtained.
- [11] It is the defendant's contention that, save for the first RM500 made at the time of the booking of the property, the plaintiffs have not made any other payment. DW3 testified that after deducting RM500 from the purchase price of RM151,000 there was a balance of RM150,500. As at the time of purchase the defendant offered a discount of RM3,000, the plaintiffs were only required to pay RM147,500. However, a further sum of RM500 was due as payment for the deposits paid to TNB and SYABAS.
- [12] PW1 claims that they had paid the full 10% and they were ever ready to pay the balance purchase price as, prior to the execution of the agreement, they had already secured Public Bank Bhd (PBB)'s approval for a loan for the balance sum. The only reason why the balance price was not paid was because the defendant failed to notify them that the State Consent had been obtained. As a matter of fact, after the defendant's long silence on this matter they took it upon themselves to make enquiries with the defendant on the status of the consent. They did so by appointing two legal firms, namely, Messrs Din & Associates and Messrs Kumari Palany & Co., to issue the written enquiries. And, when these enquiries failed to solicit any response from the defendants, PW1 lodged a police report.
- [13] According to the defendant's manager (DW3), one Chen Foong Soon, the defendant had obtained the State Consent by way of the Selangor State Authority's letter of 5 March 2008. As the

agreement was executed on 15<sup>th</sup> January 2008, the defendant was well within the 6 months period provided for in cl. 1A3. *Vide* its letter of 13<sup>th</sup> March 2008 the defendant duly notified the plaintiffs' solicitors, Messrs Norhafiza and Yap, of the said consent. A copy of the same was extended to the plaintiffs. When no money was forthcoming, the defendant issued several written reminders before finally instructing Messrs Norhafiza and Yap to issue the plaintiffs a notice to quit the premises

[14] The plaintiffs contend that the notification to Messrs Norhafiza and Yap is bad in law as at all material time Messrs Norhafiza and Yap were the defendant's solicitors and not theirs. Save for the letter seeking vacant possession issued on the defendant's instructions, the plaintiffs had never received any correspondence from Messrs Norhafiza and Yap.

[15] After considering the submissions of both parties, I find that the following issues require determination:

(i) Have the plaintiffs shown that they have paid the first 10% of the purchase price?

(ii) Did the defendant notify the plaintiffs that the State consent had been obtained?

(i) ***Have the plaintiffs shown that they have paid the first 10% of the purchase price?***

[16] PW1 testified that the first RM500 out of the deposit of RM15,500 was paid when he placed the booking of the property. He then continued to pay towards the balance of RM15,100 by way of instalments until he withdrew his EPF. At the time of the EPF withdrawal, only a sum of RM5,000 was outstanding. One Janet accompanied him to the bank on that day. PW1 says Janet

is the agent and assistant of a Mr. Lim and the defendant. After making the withdrawal, he surrendered the whole sum of RM5,000 to Janet. But he was not issued with any receipt. He attempted to locate Janet to be his witness but his attempts were futile. He went to her office but found that she had been transferred to another office. He was also unable to get her through the old mobile phone number which she gave him previously. It is also PW1's contention that the fact that he was given the keys to the property is further evidence that he had paid the full deposit.

When it was pointed to him under cross examination that his withdrawal amount was only RM1,520.14 and not RM5,000, PW1 said that what he meant was that the sum total of his EPF and his wife's EPF. When it was again pointed to him that when combined with the 2<sup>nd</sup> plaintiff's share of RM2,500.23, the amount still did not reach RM5,000, PW1 said the rest were paid in cash on that day.

PW1 was then asked as to why in his police report lodged on 7<sup>th</sup> December 2005 he stated that he had only paid RM1,000. His reply to this appears as follows:

PD: And this is a date ... this police report 'pada tarikh 7/12/2005, saya dan isteri saya telah beli sebuah rumah atas nama kami berdua seperti alamat di atas dari Mr. Lim daripada pemaju Loyaltage Sdn Bhd dan telah bayar deposit sebanyak RM1,000 dan beliau bagitau ....' So do you confirm in this police report before you ... the allegation of RM5,000 you have only paid RM1,000 instead of RM10,100 as you alleged just now. You have only paid RM1,000 based on your own report.

PW1: I agree that I failed to state here of the instalment received by the developer. I agree that I did not state in the report ...(but) I disagree that I failed to pay the defendant RM15,100.

[17] The defendant called the said Janet as its witness. Janet (DW4) explained that her company was appointed as the real estate agent by the defendant to sell the property. The plaintiffs had initially dealt with her colleague one Mr. Lim. She took over from Mr. Lim. She said it was not true that she had moved office. It is also not true that she cannot be contacted by her mobile phone as she had retained the same number for the past 20 years. If anything, she was the one who had difficulties contacting PW1 as, on the request of the defendant, she was trying to get him to pay up the differential sum of either RM15,000 or RM16,000.

She denies having collected instalments from the plaintiffs for the defendant. She also denies accompanying PW1 to the bank on the day that he withdrew his EPF and then receiving the money from him. But her clerk did, on the request of PW1, assist him with the filling up of the withdrawal forms. As far as the plaintiffs' transaction was concern, her company received only one payment of RM500 paid at the time of booking and she handed this payment to the defendant.

[18] RM15,000 is no meagre sum. I find it difficult to believe that the plaintiffs will give this sum without requesting for receipts as proof of payments. PW1's testimony on the amount owing and the manner they made payments were riddled with inconsistencies and contradictions as I have endeavoured to demonstrate in paragraph 15 above. And, even if the contents in his police report were true, PW1 had stated in the report that he

had only paid RM6,000. RM6,000 is far from the full 10% deposit which PW1 admits to be RM15,100.

[19] PW1 also said that he intended to call Janet as his witness except that he was unable to locate her. This implies that Janet's evidence would be favourable to and corroborate his testimony. However, Janet, his purported witness testified against him. I find Janet to be an honest witness who was certain of her facts and able to testify precisely and confidently.

[20] As to the keys to the house, DW3 explained that PW1 had approached him for the keys saying that he (PW1) was getting married and needed the property as the matrimonial home. Although the full 10% had not been paid, DW3 nonetheless gave the keys to PW1 on sympathetic grounds after considering that the State Consent had been obtained and PBB had approved the plaintiffs' loan. Payment would then be as a matter of course. I find this to be a plausible explanation.

[21] After considering the evidence before me, I find that I am unable to believe that the plaintiffs made any payment apart from the initial payment of RM500. It is therefore my finding that the plaintiffs have failed to show that they had paid the full 10% deposit.

(i) **Did the defendant notify the plaintiffs that the State consent had been obtained?**

[22] Pursuant to cl. 4.1 and the Second Schedule of the Agreement, the defendant must notify the plaintiffs that the State Consent has been obtained. DW3 testified that the defendant discharged its duty by issuing the following letter to the plaintiffs' solicitors, Messrs Norhafiza and Yap.



**LOYALTAGE SDN. BHD**

**(Co. No. : 628177-K)**

**No. 5-4, Pusat Dagangan UMNO, Shah Alam, Seksyen 11,  
Persiaran Damai, 40100 Shah Alam, Selangor Darul Ehsan.**

**Tel : 03-5512 1886 Fax : 03-5512 1887**

Your Ref : JY/AP/482/07/jt(PBB-z)

Our Ref : LSB/PT152/RTE-09/08

Date: 13/3/2008

**NORHAFIZA & YAP**

Advocates & Solicitors

No. 497, 1<sup>st</sup> Floor

Jalan PJU 1/1

47301 Petaling Jaya

Selangor Darul Ehsan.

By Hand

Dear Sir/Mdm,

**Re : SALE AND PURCHASE AGREEMENT**  
**Property : All that place of land held under**  
**H.S.(D) 16708, No. P.T.185, In the Town of**  
**Sepang, District of Sepang and the State of**  
**Selangor measuring approximately 111**  
**square metre In area together with a unit of**  
**double storey terracehouse erected thereon**  
**and known as Lot No. RTE-09, Type**  
**Intermediate, Taman Murni 2.**

**Developer : Loyaltage Sdn Bhd**

**Proprietor : Sheikh Mah Development Sdn Bhd**

**Purchaser(s)/**

**Customer(s) : Alagantharan a/l Perumal &**  
**Moganasunthary a/ David Marsel**



**Financier : Public Bank Berhad**

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We write to give notice of confirmation that the said consent has been obtained from the State Authority.

Enclosed a Blanket Consent of PEJABAT TANAH DAN GALIAN SELANGOR / ref :

Bil.(18) dlm.PTGS/PD01/295/2005

Note : (1) Without prejudice to our rights under clause 9, if the instalment remained unpaid at the expiration of the period specified above, interest at the rate of 10% p.s calculated on a day to day basis shall be charged.

Please advise your client to make payment within three (3) months of receipt of this letter. A copy of the progress claim dated 13 Mac 2008 address to Purchaser for your action.

Our bank address and account no: 12200008989, Hong Leong Bank Berhad, 169 Jalan Teluk Pulai, 41100 Klang, Selangor Darul Ehsan. Fax to us the bank in slip.

Thank you.  
Your faithfully,  
LOYALTAGE SDN BHD  
T.t

.....  
  
CHEN FONG SOON

c.c En. Alagantharan a/l Perumal By Hand  
Pn. Moganasunthary a/p David Marsel

No. 9, Lorong Murni 15/4

43900 Sepang

Selangor Darul Ehsan (A copy of progress claim dated 13 Mac 2008 is enclosed)

Apart from this letter, the defendant also issued reminders to the plaintiffs at no.9, Lorong Murni 15/4, 43900 Sepang, Selangor Darul Ehsan to pay up. Mr. Ben, the learned counsel for the defendant, contends that there is no way in which the plaintiffs did not know that the State Consent had been obtained.

[23] The plaintiffs deny that they have had knowledge of the notification on two grounds, namely, (i) that Messrs Norhafiza and Yap was never their solicitors and (ii) that they were not residing at the address to which the letters were sent.

[24] It is trite law that solicitors are agents of their client. As such knowledge of solicitors is knowledge of the client. In *Abu Bakar Ismail & Anor v. Ismail Husin & Ors & Other Appeals* [2007] 3 CLJ 97 Gopal Sri Ram JCA (as he then was) in delivering the judgment of the Court of Appeal held (at p.11):

Now the general rule is that the knowledge of a solicitor is the knowledge of the client, so that it is not open to the client to say that the solicitor did not disclose the true facts to him. Thus in *Rolland v. Hart* [1870] Ch App 678, 681 which was followed by the High Court of Australia in *Stuart v. Kingston* [1923] 32 CLR 309, Lord Hatherley LC said: Then the only question is what is actual notice? It has been said over and over again that notice to a solicitor of a transaction, and about a matter as to which it is part of his duty to inform himself, is actual notice to the client. Mankind would not be safe if it were held that, under such circumstances, a man has no notice of that which his agent has actual notice of. The purchaser of an estate has in ordinary cases,

no personal knowledge of the title, but employs a solicitor, and can never be allowed to say that he knew nothing of some prior encumbrance because he was not told of it by his solicitor.

[25] As such in order to determine whether the plaintiffs have had knowledge of the State Consent, I would have to consider the following subsidiary issues:

- (a) Were Messrs Norhafiza and Yap the plaintiffs' solicitors in the Sale and Purchase Agreement?
- (b) And, if Messrs Norhafiza and Yap were not the plaintiffs' solicitors, did the plaintiffs receive the notices that were sent to them at no.9, Lorong Murni 15/4, 43900 Sepang, Selangor Darul Ehsan?
- (a) *Were Messrs Norhafiza and Yap the plaintiffs' solicitors in the Sale and Purchase Agreement?*

[26] PW1 maintains that Messrs Norhafiza and Yap were not their solicitors. He states that it was the defendant who had appointed the said firm to handle the Sale and Purchase Agreement. The defendant denies appointing Messrs Norhafiza and Yap either for the plaintiffs or for itself. DW3 explains that:

Messrs Norhafiza and Yap was recommended through Janet and Mr. Lim and Messrs Norhafiza and Yap was the solicitors who prepared the sale and purchase agreement for the purchaser. Messrs Norhafiza and Yap was the representing lawyer for the purchaser but the legal fee was paid by the developer. This is the offer of this project.

DW3 relies on the Sales Registration Form to support his testimony. The Sales Registration Form appears as follows:



**SALES REGISTRATION FORM No.0017**

**PROJECT: TAMAN MURNI 2**

**DATE : 7/12/05**

**TYPE OF PROPERTY**

TYPE	DOUBLE STY	LOT NO		UNIT REF	RTE 9
SELLING PRICE					

**PARTICULARS OF PURCHASER (S)**

NAME	1)ALAGANTHARA N A/L PERUMAL	2)ANGAI A/P MARUTHAVE ERAN	3)ADDRESS (CORR)
TEL NO			
COMPANY			
TEL/FAX			
H/P NO			
I/C NO	800609-10-5423	560717-10- 5228	
OCCUPATI ON			
SEX			

**DEPOSIT / 1<sup>st</sup> PAYMENT**

AMOUNT	RM500 CASH	CHEQUE NO:
CREDIT CARD NO:	27/12/05 RM500 CASH	BANK LOAN/EPF/GOVERMENT OTHERS



**SPA SOLICITORS / LAWYER: TO PAY ONLY STAMP DUTY**

NAME	NORHAFIZA & YAP	TEL NO:	78032773
SOURCE OF FINANCE / LOAN AMOUNT			

**PARTICULARS OF FINANCE**

With reference to the above, I/We hereby confirmed that a sum of RM being the earnest deposit for the above property, has been paid

Please be informed that we will not be liable for any additional charges incurred for incorrect processing of your property transfer due to incorrect answer provided by your goodself to the above question.

We hereby undertake to pay balance sum of RM, being balance of the 10% deposit towards the Purchase Price, from my EPF withdrawal/bank loan within ( ) days from the date hereof, and we also undertake to execute the Sale & Purchase agreement within 7 days from the date hereof, failing which your goodself shall reserve the right to *forfeit* the said sum herein before paid by me/us as liquidated damages, and I/We shall have no further claim whatsoever against your good self.

**PURCHASER (S') SIGNATURE**

- 1)
- 2)
- 3)

**FOR OFFICE USE ONLY : PURCHASERS PRICE RM15,000**

RECOMMENDED BY REMARKS	Z & G MARKETING SERVICE		
		ATTENDED BY	P.S.Lim

[27] Mr. Ben in his submission refers to clause 20 and clause 23.1(d) of the agreement. These clauses state as follows:

**Clause 20 Service of documents.**

20.1 Any notice, request or demand required to be served by either party hereto to the other under this Agreement shall be in writing and shall be deemed to be sufficiently served –

- (a) if it is sent by the party or his solicitors by registered post addressed to the other party's address hereinbefore mentioned and in such case it shall be deemed to have been received upon the expiry of a period of five (5) days of posting of such registered letter; or
- (b) if it is given by the party or his solicitors by hand to the other party or his solicitors.

**Clause 23. Interpretation.**

23.1 In this Agreement, where the context so admits-

- (a) ...
- (d) "Purchaser's Solicitors" means any solicitors preparing this Agreement and has been appointed to prepare the memorandum of transfer favouring the Purchaser and to complete the transfer of the said Property to the Purchaser;

[28] Mr. Ben submits that by virtue of these two clauses, service of the notice on Messrs Norhafiza and Yap was legally sufficient as Messrs Norhafiza and Yap are the plaintiffs' solicitors. The plaintiffs having executed the agreement cannot now resile on those terms.



[29] The defendant called one Yap Ching Fa as DW1. He introduced himself as the solicitor from the firm of Messrs Norhafiza and Yap who acted for the plaintiffs in the sale and purchase agreement as he was appointed by them. He, however, was unable to produce in Court any documentary evidence of the appointment. He had met them twice, once when the agreement was executed and the other was during the loan documentation. He confirmed that he did receive the defendant's notification as alluded to in paragraph 22 of this judgment. Upon receipt of the notification, his firm contacted and informed the plaintiffs of it.

[30] Miss Vasantha, the learned counsel for the plaintiffs, submits that DW1 is an untruthful witness. He cannot claim to be the plaintiffs' solicitors as he was unable to produce any written appointment by the plaintiffs. The only documentary evidence of appointment was in the Sales Registration Form and by that the plaintiffs' mandate to Messrs Norhafiza and Yap was only limited to matters pertaining to the stamp duty. DW1 did not even know the reason why the plaintiffs' PBB's loan was cancelled. His legal fees were paid by the defendant and not the plaintiffs. Over and above these, it was Messrs Norhafiza and Yap who issued the defendant's demand notice for vacant possession against the plaintiffs. Therefore, Messrs Norhafiza and Yap were the defendant's solicitors at all material time.

[31] It is true that there were shortcomings in DW1's testimony. But he cannot be said to be an untruthful witness. It is not true that he was not aware of Public Bank's termination of the plaintiffs' loan. He explained that the bank had terminated the loan as the plaintiffs were unable to complete the required documentation on time. He admitted that he did issue the notice to vacate the premises on behalf of the defendant. But he explained that he thought it to be a straightforward letter. The notice did not

involve any contentious matter and the basis of the notice was for non-payment of the balance purchase price. It is a fact that the plaintiffs did not pay. He did not act for the defendant apart from issuing this notice.

DW1 also explained that his firm communicated with the plaintiffs by letters and then the firm will follow up with telephone calls. And, he was certain that his firm did inform the plaintiffs of the State Consent.

[32] Miss Vasantha also submitted at length how DW1 had acted unprofessionally and in breach of the Legal Profession Act 1976. That may be so but this court is not the appropriate forum for the plaintiffs to ventilate those grievances. The truth is that the plaintiffs executed the agreement and they have not raised the issue fraud, undue influence or misrepresentation or established the same in respect of the execution of the said agreement. In *Polygram Records Sdn. Bhd v. Hillary Ang & Ors & Anor* [1994] 3 CLJ 806 Visu Sinnadurai J held (at p.815)

There is no principle of law which states that where a party does not fully understand certain terms of a contract, the contract may be vitiated. The general principle of law, of course, is that a party who signs a written contract is bound by the terms of the contract, except in limited cases where fraud, undue influence, or misrepresentation may be established. This rule is so strict that even if a party to a contract has not read the contents of a contract, he is held to be bound by its terms. In the leading case of *L'Estrange v. F. Graucob* [1934] 2 KB 394, Scrutton LJ pronounced (at p 403): when a document containing contractual terms is signed, then, in the absence of fraud, or, I may add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not.

It follows that the plaintiffs are bound by cl.20 and 23(1) of the agreement.

[33] I also note that the learned counsel for the plaintiffs made no attempt to cross examine DW4 (Janet) on the Sales Registration Form on two crucial issues, namely, (1) whether it was true that Messrs Norhafiza and Yap was introduced by DW4's firm to the plaintiffs and, if yes, (2) whether the appointment was only limited to the stamp duty on the agreement. With this omission, DW3's evidence on the appointment of Messrs Norhafiza and Yap as alluded to in paragraph 26 stands uncontradicted; whilst Miss Vasantha's submission as referred at paragraph 30 on the Sales Registration Form remains a mere statement from the Bar.

[34] The issue of a third party paying for solicitors fee was succinctly dealt with by Hue Siew Kheng (J) in *Matthias Chang Wen Chieh v. American Express (M) Sdn. Bhd. & 3 Ors* [2011] 1 LNS 1566 where the learned Judge held:

Be that as it may, there is no provision of law or of practice or evidence that a solicitor-client relationship exists purely on the basis of direct payment of legal charges by the client to its solicitors or, in this case, that there is no solicitor-client relationship merely because payment of the legal charges has not been effected directly by the client to its solicitor.

Based on the evidence, I see no reason to depart from this ruling. DW3 had explained that the payment of the legal fees was part of the offer in this project. It was open to the plaintiffs to reject the offer but they did not. Having accepted the offer and acting on it, it would be inequitable to now allow them to deny the appointment Messrs Norhafiza and Yap to avoid their contractual obligations.

[35] As such, I find, both on legal and evidential grounds, that Messrs Norhafiza and Yap were the plaintiffs' solicitors in the Sale and Purchase Agreement. It is, therefore unnecessary for me to consider issue (b).

[36] The facts show that although the due date for full payment was on 12<sup>th</sup> June 2008, the defendant gave the plaintiffs an extension of three months from its letter of 5<sup>th</sup> August 2008 (bundle B2 p.12) as the plaintiffs' loan had been rejected. When no money was forthcoming the defendant issued another reminder by a letter dated 22<sup>nd</sup> November 2011(bundle B2 p.13). This letter notified the plaintiffs that they had until the latest 29<sup>th</sup> February 2012 to pay the balance purchase price. But regardless of these letters, going strictly by the terms of the agreement, the defendant was well within its right when it terminated the agreement pursuant to clause 10 which states as follows:

Clause 10. Default by Purchaser and determination of Agreement.

10.1 If the Purchaser –

- (a) subject to **subclause (3)** below, fails to pay any instalments payable under **clause 4.1** herein in accordance with the **Second Schedule** hereto or any part thereof and any interest payable under **clause 9** for any period in excess of **twenty eight (28) days** after its due date; or
- (b) subject to **subclause (3)** below, fails to pay any sum or sums payable under this Agreement within the time stipulated for payment of any period in excess of **twenty eight (28) days** after its due date; or
- (c) ...
- (d) ...



The Vendor may, subject to **sub-clause (2)** hereof, annul the sale of the said Property and forthwith terminate this Agreement and in such an event-

- (i) The Vendor shall be entitled to deal with or otherwise dispose of the said Property in such manner as the Vendor shall see fit as if this Agreement had not been entered into;
- (ii) ...

[37] As the facts adduced show that the plaintiffs themselves were clearly in breach of the agreement, the reliefs they seek cannot be allowed. Accordingly, their claim is dismissed with costs of RM20,000 and the defendant's counter-claim as set out in paragraph 33 (a), (b), (c) and (d) of the Statement of Defence and Counter-claim is allowed.

**Dated:** 15 FEBRUARY 2017

**(CHAN JIT LI)**  
Judicial Commissioner  
High Court, Shah Alam

**COUNSEL:**

*For the plaintiff - R Vasanthi & Punitha Sinnapan; Kumari Palany & Co*

*For the defendants - Ben Lee Kam Foo & Nabila Zakariah; Gan & Zul*

**Case(s) referred to:**

*Soo Lip Hong v. Tee Kim Huan [2005] 4 CLJ 119*



[2017] 1 LNS 246

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