Malayan Law Journal Unreported/2015/Volume/Lim Ban Kay @ Lim Chiam Boon lwn Kilang Kelapa Sawit Morib Sdn Bhd dan satu lagi guaman sivil - [2015] MLJU 2179 - 13 October 2015

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COURT OF APPEAL (PUTRAJAYA)
DAVID WONG DAK WAH, UMI KALTHUM BINTI ABDUL MAJID AND ABDUL RAHMAN BIN SEBLI, J
RAYUAN SIVIL/RAYUAN NOS: B-02-1288-08/2014 DAN MT4(2)-22-2109-07
13 October 2015

*James Chow **Chow Kok Leong** & Co. for the appellant.*

Chong Kah Heng (Arthur Wang Ming Way) (Ng Zhi Ying) for the respondent.

David Wong Dak Wah J:

JUDGMENT OF THE COURT

Introduction:

[1] This is an appeal against the decision of the High Court in which the learned Judge dismissed the Appellant's/Plaintiff's claim that the Trust Deed dated 11 November 2002 was invalid.

[2] We heard the appeal and after due consideration to respective submissions of counsel, we allowed the appeal and our reasons are these.

Background facts:

[3] The 1st Respondent had, via an agreement dated 7 June 1977, purchased lands known as Geran No. 30218, Lot 1, Mukim Bandar, Daerah Kuala Langat, Selangor Darul Ehsan, Geran 24859, Lot 2, Mukim Bandar, Daerah Kuala Langat, Selangor Darul Ehsan and Geran No. 28093, Lot 514, Daerah Kuala Langat, Selangor Darul Ehsan from Central Oil Palm Sdn Bhd.

[4] Upon becoming the beneficial owner of the aforesaid lands, the 1st Respondent between years 1988 till 1996 sold portions of the aforesaid lands to the Appellant and 128 other purchasers.

[5] Disputes in respect of the portions of the aforesaid lands that were sold arose between the Respondents and the Appellant and the other 128 purchasers. These disputes gave birth to the existence of four agreements to settle the disputes. Three of the agreements were dated 28 August 1998 while one called a "supplemental agreement[#65533]? was dated 18 January 2000.

[6] These disputes were set out in the recitals of the agreements and they are recitals C and D of the first three agreements dated 28 August 1998 which read as follow:

> *C. By an agreement dated 19 November 1996 and made between KKSM of the one part and various persons whose names specified therein which includes the Claimants ("the Settlement Agreement[#65533]?), the parties agreed to resolve disputes which had arisen between them with respect to the KKSM Land upon the terms and conditions therein contained.*
>
> *D. The dispute between KKSM and the Claimants was specifically with respect to Four Hundred (400) acres of the KKSM Land ("the Target Land[#65533]?) of which six (6) acres have been compulsorily acquired.*

[7] It was the Appellant's claim that through the four agreements, he is entitled as a beneficial owner to 263 acres of land held under H.S (M) 13652, PT 685, Mukim Bandar, Daerah Kuala Langat, Selangor Darul Eshan. This 263 acres of land is part of the 573.37 acres held by the 1st Respondent.

[8] The 1st Respondent on 11 November 2002 executed a Trust Deed ("2002 Trust Deed[#65533]?) in respect of the 573.37 acres to one Tan Hock Low (THL), in effect making THL the beneficial owner of the 573.37 acres of land. Upon the death of THL, the 2nd and 3rd Respondents (who are the brothers of THL) approached the 1st Respondent to inform that THL had revoked the 2002 Trust Deed with the intention to grant a new Trust Deed to make them the beneficial owners of the 573.37 acres of land. The 1st Respondent acceded to the 2nd and 3rd Respondents' request and created a new Trust Deed dated 24 January 2003 ("2003 Trust Deed[#65533]?).

[9] The existence of the 2003 Trust Deed had given rise to the dispute between the parties in this case. The contention of the Respondents was simply that the 2002 Trust Deed had superseded the four agreements and hence the Appellant had no claim pursuant to the same.

High Court decision:

[10] In our view the learned Judge was correct to adjudicate the dispute by asking himself whether or not the 2002 Trust Deed had superseded the four agreements.

[11] The learned Judge after reviewing the evidence concluded that the 2002 Trust Deed had superseded the four agreements and hence dismissed the Appellant's claims. From the grounds of decision, it was quite clear that his reasons were simply that the Appellant had not called any witnesses to rebut the Respondents' witnesses' evidence that the Appellant knew of the existence of the Trust Deeds and had in fact agreed to the execution of the Trust Deeds. The crucial witness being DW3 the lawyer who prepared the 2003 Trust Deed. He had given evidence that the contents of the 2003 Trust Deed was explained to the Appellant and told him that the Trust Deed would supersede the four agreements. And since there was no rebuttal evidence from the Appellant, the learned Judge accepted that the Appellant had by his presence consented to the Trust Deeds.

Our grounds of decision:

[12] It was undisputed that the Appellant had premised his case purely on the four agreements entered between him and the 1st Respondent. It was the considered view of the Appellant's counsel at the trial Court that he could prove his case by relying just on the existence of the four agreements which were not disputed by the Respondents in any way at all except that they have been superseded.

[13] It was our view that this case turned on an interpretation of the four agreements and the Trust Deeds. What we had were written documents and in such circumstance, the Court must first look at those documents to determine the intentions of the parties.

[14] Counsel for the Appellant in his submission relied primarily on clause 10.1, 11.1 and 6.2 of the respective first three agreements dated 28 August 1998.

> Clauses 10.1 and 11.1 read as follows:
>
> *This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by the parties hereto or by way of written correspondence between the parties' respective solicitors.*
>
> Clause 6.2 reads as follows:
>
> *This agreement contains all the understandings and representations between the parties pertaining to the matters*

referred to herein and supercedes all agreements, if any, previously entered into by them with respect thereto. This agreement may be modified only by written supplement, duly executed by the parties.

[15] In the supplemental agreement dated 18 January 2000, we could not find any provision to say that the just mentioned provisions had been removed. In fact clause 6 of the supplemental agreement states that "Except as expressly amended by this Agreement, the provisions of the Principal Agreements [*which are the first three agreements dated 28 August 1998*] shall remain in full force and effect[#65533]?.

[16] In our view the just mentioned provisions were crystal clear in that the intention of the contracting parties was that no amendment to the four agreements could be made unless by a subsequent written document. In the case of *Perry v Shaffields* (1916) 2 Ch 187 at page 192 Lord Cozen Hardy made a pertinent point when he said:

"Though, when a contract in letters, the whole correspondence should be looked at, yet if once a definite offer has been made, and it has been accepted without qualification, and it appears that the letter of offer and acceptance contained all the terms agreed on between the parties the complete contract thus arrived at cannot be affected by subsequent negotiation.

When once it is shown that there is a complete contract, further negotiations between the parties cannot, without the consent of both, get rid of the contract already arrived at.[#65533]?

[17] Further, the Appellant was not a party to the Trust Deeds and in any event there is no provision therein to state that the four agreements had been superseded. The fact that the Appellant did not call any witnesses to rebut the oral evidence of the Respondents' witnesses does not work against the Appellant for the simple reason that there was ample evidence to neutralize the oral evidence of the Respondents. In any event we found that the fact that the Appellant was never asked to signify his consent by putting his signature on the Trust Deeds was significant in view of the undisputed fact he was present during the signing of the Trust Deeds. This omission gave rise to the reasonable inference that he had not agreed to it.

[18] Furthermore sections 91 and 92 of the Evidence Act 1950 are quite specific in that as a general rule no oral evidence is admissible to contradict, vary, add to or subtract from the terms of the written agreement proved under section 91 unless the evidence sought to be introduced falls within the provisions of section 92.

Conclusion:

[19] With respect, had the learned Judge considered the provisions set out above by us, we had no doubt that he would come to a different conclusion. This case was simply a construction of written agreements reached by the contracting parties and our duty was to give the words employed in those documents their natural meaning which was the four agreements could only be superseded by another written document. As there was no such document in this case, the full force of the four agreements remained intact.

[20] Hence we allowed the appeal with costs of RM10,000.00 here and below for each set of Respondents. The High Court's orders were set aside. We further granted prayer 30(a) (b) (f) and (g) of the statement of claim which in substance ordered the specific performance of the three agreements all dated 28 August 1998 and the supplemental agreement dated 8 January 2000 and declared that the Deed of Trust dated 11 November 2002 did not supersede the aforesaid four agreements. We allowed interest at 5% per annum from date of judgement to date of realization. We also ordered that the deposit be refunded back to the Appellant.