

IN THE COURT OF APPEAL OF BRUNEI DARUSSALAM

CIVIL APPEAL NO. 7 OF 1997

BETWEEN

HJH JAMILAH BINTI UDIN

..... Appellant

AND

MAJOR HJ ABDUL RAFAE'A BIN HJ KASSIM Respondent

Before : FUAD, P.; HUGGINS, J.A. AND CONS, J.A..

Date of Hearing : 30 APRIL, 1998.

Date of Judgment : 9 MAY, 1998.

J U D G M E N T

CONS, J.A.:

The basic facts underlying this appeal, as they were found by the Chief Justice in the Court below, may be simply stated.

On 21 October 1996 Major Haji Abdul Rafae'a Bin Haji Kassim ("the Major") agreed to purchase and Hajah Jamilah Binti Udin ("the Landowner") agreed to sell a plot of land in Kampong Kapok, Jalan Muara. The agreed price of \$3.5 million was later reduced to \$2.6 million, payable in two tranches when certain conditions should be fulfilled. The conditions were in the event never fulfilled, but a payment of \$10,000 was nevertheless made "towards the purchase price".

Sometime in December of that year the Landowner changed her mind about a sale as such and she and the Major had discussions instead towards a possible joint venture development. These came to nothing and by January the original contract was resurrected. But then, at a meeting on the 22 of the month, the contract was ended by mutual agreement. In March the Landowner offered the Major the return of his \$10,000.

Although the Chief Justice was satisfied that the Agreement had been terminated, that had not been the evidence of the Major. He had contended that the Agreement continued to exist, and it was on that basis that he commenced the proceedings below, claiming specific performance, and damages in lieu or in addition. In the light of his conclusion that we have just mentioned the Chief Justice rejected the claim for specific performance, but made orders in the Major's favour, firstly for the return of the \$10,000 with interest at 6% p.a. from the date of payment (5 Nov. 96) until the Landowner's offer to return the same on 11 March 1997; and secondly for the refund of any other expenses which the Major had incurred in furthering either the contract for sale and purchase or the proposal for joint development. These expenses were to be assessed by the Registrar if the parties failed to agree.

The justification for the reimbursement of the "other expenses" was that in the Chief Justice's view the Major "had made this into a condition on which he ended the agreement". That view was supported by what he saw as the Landowner's "vacillation" and her failure to sign the documents upon which payment of the first tranche of the purchase price depended.

No challenge has been made by either party to the finding that the contract had been cancelled by mutual agreement. And the Landowner does not appeal against the order to repay the \$10,000 with interest. But she does by this appeal question the order for reimbursement of those "other expenses" and the Chief Justice's order as to costs.

At first glance it could easily be thought that there was no evidence to support the finding of such an express term in the compromise agreement, for the Major in his own evidence said "I told them that I had some plans but did not ask for my expenses to be refunded to me". But Mr Lim, for the Landowner, has very properly drawn our attention to observations by other witnesses which, when taken together with the Landowner's eventual agreement, might, in our view, have been enough. Thus Mr Sharikan, a friend of the Landowner and relative of the Major said "The Major said that he no longer wanted the land. He also asked the defendant to compensate him for his expenses"; and Miss Latipah, the Landowner's daughter: "The Major said that he was to ask his lawyer to get back his expenses".

If the Major did so ask his lawyers, nothing further was done. His claim below rested solely on the contract for sale and purchase. Nowhere in his Statement of Claim

or in his Reply is there any alternative allegation such as "if, which is denied, the contract for sale and purchase was terminated by mutual agreement, then it was a term of that agreement that the Plaintiff should be reimbursed such monies as he had expended in furthering the contract of sale or the proposal for the joint development of the land in question". Some allegation upon those lines was essential if the Major were to obtain a valid order. No court can make a valid order in vacuo. There must be a pleaded cause of action. If authority is necessary to show that, it can be found, for example, in Blay v Pollard and Morris [1930] 1 K.B. 628 where Scrutton L.J., at 634 said:

"Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue on which the judge decided was raised by himself, without amending the pleadings, and in my opinion he was not entitled to take such a course".

This is not just pedantry. A party is entitled at all times to know exactly what case it has to meet. It is suggested that the need was met in the present instance by the fact that the question of reimbursement had been mentioned in the evidence and that, once it became clear that the claim for specific performance was not going to succeed, it was made plain to all that the Major wished at least to recover his expenses.

We cannot accept that contention. It would open the door to uncertainty or to impossible situations such as the present, since counsel for the Landowner does not accept that the Major's wishes in this respect were made plain during the hearing at all.

With every respect, the order that he recover those "other expenses" cannot stand. We therefore allow the appeal and set aside the order. It follows that the Landowner shall have the costs in this Court and all the costs in the Court below.

SIR DEREK CONS
Judge, Court of Appeal

KUTLU TEKIN FUAD

SIR ALAN HUGGINS

President, Court of Appeal

Judge, Court of Appeal

Mr Kelvin Lim (M/S Susanna Lim & Co.)

for Appellant

Mr Siva (M/S Ahmad Isa & Partners)

for Respondent