

**Wong Khai Wah  
Rahul Ramesh Pudupully  
WR Global Holdings Sdn Bhd**

**... 1<sup>st</sup> Plaintiff  
... 2<sup>nd</sup> Plaintiff  
... 3<sup>rd</sup> Plaintiff**

AND

**Amec Foster Wheeler (B) Sdn Bhd**

**... Defendant**

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**(High Court of Brunei Darussalam)  
(Civil Suit No. 24 of 2023)**

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Edward Timothy Starbuck Woolley, J.C.  
**Date of Hearing: 3<sup>rd</sup> November, 2025.**  
**Date of Decision: 8<sup>th</sup> November, 2025.**

*Headnote: Appeal from decision under Order 14A – application of non-binding term – whether evidence of implied contract overriding it – locus standi of directors acting for company.*

Mr Lim Rui and Ms Navrita Kaur (M/S Raed Lim Advocates & Solicitors) for the Plaintiffs.  
Mr Awg Abdul Muqtadir Bin Awang Hj Suhaime (M/S AIP Law) for the Defendant.

**Case cited:**

*Joanne Properties Ltd v Moneything Capital Ltd* [2020] EWCA Civ 1541

**DECISION**

**Woolley, J.C.:**

This is an appeal from the decision of Registrar Raihan Nabilah binti Haji Ahmad Ghazali given on 16 September 2025 in which she allowed the defendant’s application under Order 14A of the RSC dismissing the plaintiffs’ claim with costs.

2 The questions of law which were asked to be determined under the defendant’s application under Order 14A fell into two parts: the first was whether the non-binding term in the “*Request for Proposal*” (RFP) excluded any legal obligation between the parties until a lease agreement is mutually executed; the second was whether the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs had no locus standi or right to claim in the action as they were agents of the 3<sup>rd</sup> plaintiff.

3 The background to this matter is that in or around April 2017 the defendant was considering renting office accommodation in Kuala Belait and discussions began with the 2<sup>nd</sup> plaintiff regarding part of a premises known as the Riviera Hotel. These premises were owned by a third party and it appears that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff’s intention was that it would be leased to the 3<sup>rd</sup> plaintiff who would then sub-let to the defendant. The 3<sup>rd</sup> plaintiff had not been incorporated at that stage. The defendant has a set procedure for acquisition, disposal and management of real estate for occupation for the purpose of carrying out their business, and part of this is the RFP which the intended lessor must complete setting out the terms of the

proposed lease they are offering, including, inter alia, the area to be let, the rent and the rental term and other information about the premises and the lessor. This was submitted to the defendant by the 2<sup>nd</sup> Plaintiff on 15 May 2017. Included in the RFP is clause 5.10 which reads as follows:

*“This RFP is submitted on the condition that it creates no legal obligation of any kind and that neither Landlord nor Tenant shall have any legal obligation whatsoever to one another unless a Lease is fully approved by Tenant and said Lease is mutually executed and delivered by and between both Landlord and Tenant.”*

4 Discussions had already taken place, mainly by email, between the 2<sup>nd</sup> plaintiff and Mr. Ross McPherson on behalf of the defendant, and it is the plaintiffs’ contention that those discussions and communications give rise to an implied contract upon which the plaintiffs relied and incurred expenses, and entered into a tenancy agreement on 16 May 2017 with the owner of the building, in the name of the 3<sup>rd</sup> plaintiff which was incorporated the same day, or possibly two days later, which is not clear. The plaintiffs were informed by the defendant on 14 June 2017 that they were not proceeding with the tenancy of the Riviera Hotel. The plaintiffs were later sued by the owner for breach of their tenancy in High Court Action No 10 of 2018.

5 Mr. Lim for the plaintiffs has submitted that there was an implied contract arising from the communications and discussions between the parties, and relies in particular on emails from Ross McPherson to the 2<sup>nd</sup> plaintiff dated 10 May 2017 and 12 May 2017. The first includes the words: *“Have we made any progress on beginning works at the Hotel?”*. However, the 2<sup>nd</sup> plaintiff immediately replies to this on 11 May 2017 saying: *“To begin works at the building, we will need to formalize a rental/lease agreement & security deposits before I could mobilize the contractors to move in and start demolishing.”* This clearly indicates that the 2<sup>nd</sup> plaintiff was well aware that they needed the security of a signed agreement before commencing work. The second email is dated 12 May 2017 again from Ross McPherson to the 2<sup>nd</sup> plaintiff part of which reads: *“Our legal team will be in touch early next week to outline our intent. This should release you guys to begin demolition late next week, or early the following week. Unless you are willing to start beforehand to ensure (sic)”*.

6 Mr. Lim has not been able to point me to any other correspondence, WhatsApp communications or other discussions to support the claim of an implied contract which overrides or is not subject to clause 5.10 of the RFP. While it is clear that the plaintiffs believed from the detailed negotiations that a tenancy agreement would result, it is equally clear that the defendant was still in the process of assessing this property, and no final agreement had been reached. In any event, if such an implied contract existed, what were the terms? None have been put forward by the plaintiffs, although they proceeded to enter into a tenancy with the owner and commenced demolition work. They may well have acted to their detriment in the belief that a contract would be entered into between them and the defendant, but in the event none was forthcoming.

7 Mr. Abdul for the defendant has drawn my attention to a number of authorities for the principle that where negotiations are conducted “subject to contract” then there is no binding contract until such is agreed and signed by the parties. I need only refer to that of *Joanne Properties Ltd v Moneything Capital Ltd* [2020] EWCA Civ 1541 where the English Court of Appeal, after referring to a number of similar cases, held that:

*“As the cases show, where negotiations are carried out “subject to contract”, the mere fact that the parties are of one mind is not enough. There must be a formal contract, or*

*a clear factual basis for inferring that the parties must have intended to expunge the qualification.”*

I have not been pointed to any facts here, disputed or otherwise, from which any such inference can be drawn. I would add that, at the date of the correspondence relied on, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were not in a position to enter into any contract as they had no tenancy with the owner which could be sublet, and the 3<sup>rd</sup> plaintiff had not been incorporated.

8 Mr. Lim has also put forward a case for estoppel, submitting that the principle is that a party is prevented from acting inconsistently with a promise or assurance on which another has relied to their detriment. He also, however, in his submissions, accepts that the first element of this is a clear and unequivocal promise or representation intended to affect legal relations. He has been unable to point to anything in the dealings between the parties which comes close to this and such a submission is bound to fail.

9 This is clearly a situation where Order 14A is appropriate, based as the application is on a question of law and the construction of a document. The clause in the RFP referred to could not be clearer in its intention that no legal obligations are created until a formal lease is signed, and there is, as I have found no factual disputes here which a judge at trial could find might negate the effect of that clause.

#### **Locus standi of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs**

10 The defendant's position on this is that the proposed lease agreement was always going to be with the 3<sup>rd</sup> plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were only the agents, and later, directors, of the 3<sup>rd</sup> plaintiff and were never negotiating on their own behalf, and therefore have no interest or claim in the matter. They support this by pointing to the defence filed on their behalf in HCCS No 10 of 2023, referred to above. In that they claimed they could not be liable for any breach of tenancy as they had signed the tenancy agreement as directors of the 3<sup>rd</sup> plaintiff. They now claim that they were also acting here in their own capacity. As counsel for the defendant says, they cannot have it both ways.

11 While I accept the submission of Mr. Lim for the plaintiffs that there can be situations where a person contracts, or purports to contract, for a company not yet in existence, and certain rights and obligations arise, that cannot in any event be the case here. In the authorities shown to me those situations occurred in particular circumstances and where the agent or promoter had signed a binding contract. Here the plaintiffs have produced no evidence in the dealings between the parties that indicate the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were negotiating other than as agents for the 3<sup>rd</sup> plaintiff, and in any event, as I have found above, there is similarly no evidence of a binding contract, implied or not.

12 For these reasons I find that the decision of the learned Registrar was correct and cannot be faulted, and this appeal is dismissed with costs to the defendant to be taxed if not agreed.



**EDWARD TIMOTHY STARBUCK WOOLLEY**  
Judicial Commissioner

