CHIA SOO KHENG ... **Appellant**

AND

CHONG KONG LIM ... **Respondent**

(High Court of Brunei Darussalam)
(Originating Motion No. 14 of 2023)

Muhammed Faisal bin PDJLD Kol (B) DSP Haji Kefli, JC
Date of Ruling: 17th February, 2025.

Headnote: Application for leave to appeal out of time – procedural irregularity – leave to appeal granted - contract law – appeal against magistrate's decision in dismissing plaintiff's case – magistrate's decision upheld - application dismissed.

Appellant in person and unrepresented.
Respondent absent and unrepresented.

Cases cited:
BOM v BOK & anor [2018] SGCA 83
Daventry District Council v Daventry & District Housing Ltd [2012] 1 WLR 1333
Panatron Pte Ltd & anor v Lee Cheow Lee & anor [2001] SGCA 49
Union Fidelity Trustee Co of Australia Ltd v Gibson [1971] VicRp 69

Statutes:
Application of Laws Act (Cap. 2)
Contracts Act (Cap. 106)
Limitation Act (Cap. 14)

RULING

Muhammed Faisal, JC:

1. Introduction

This is an application for leave to appeal out of time by the Appellant, Chia Soo Kheng, against the decision of the Acting Senior Magistrate Dewi Norlelawati binti Haji Abdul Hamid delivered on 26th August 2023. The Learned Magistrate dismissed the Appellant's claims for overdue rentals, ancillary expenses, and a loan repayment against the Respondent, Chong Kong Lim, while also dismissing the Respondent's counterclaims.

2. Procedural matters

A. Leave to appeal out of time

An oral judgment was delivered by the Learned Magistrate on 26th August 2023 in favour of the Respondent. The Appellant immediately attempted to file a notice of appeal at the Registry of the Subordinate Courts but was not permitted to, as an appellant is required to lodge a certified copy of the written decision appealed from with the notice of appeal, as under rule 5(2) of the Magistrates' Courts (Civil Appeals) Rules (Cap. 6) ('the Civil Appeals Rules').

A written decision was only made available to him on 27th September 2023, at which point the period of appeal as provided under rule 4 of the Civil Appeals Rules, being a month from the delivery of the decision appealed from, had lapsed. Upon receipt of the written judgment, the Appellant filed his notice into court, with the lapse in the period of appeal necessitating a further application for leave to appeal to be filed under an originating motion, pursuant to rule 9 of the Civil Appeals Rules.

Noting the Appellant's earlier attempt at filing a notice of appeal and the promptness in which he thereafter filed the latter notice upon the availability of the written judgment, it is appreciated that the application for leave to appeal out of time was made necessary by a procedural irregularity for which he bore no fault. Accordingly, leave is granted, and I briefly turn to another procedural matter, i.e., the Respondent's absence in the appellate proceedings.

B. Non-attendance of the Respondent

I note in sum that service had been effected on the Respondent on 11th July 2024 by leaving at his last known address following an Order For Substituted Service dated 20th June 2024. All the same, the Respondent never appeared in person any of the hearings nor did he appoint a counsel to act on his behalf.

Rule 14 of the Civil Appeals Rules provides that the non-appearance of a respondent is a non-issue, with the hearing and determination of the appeal resting only on the appellant's appearance "on the day of hearing and at every adjournment of the case, […] whether the respondent appears or not […]".[1]

The matter being so, I now consider the merits of the Appellant's appeal.

3. Background facts

The Appellant leased shop units Nos. 22 and 23 at the Muara Centre from one Low Soon Lye and sublet them to the Respondent under a tenancy agreement dated 13th June 2015 ('CLK1'). I bear in mind that the Appellant claimed the agreement to have been verbal, under which a rate of $4000 per month was allegedly agreed upon by the two parties. I would be remiss, however, to disregard CLK1, being a written agreement upon which the signatures of both parties had been duly imprinted. Under CLK1, the rate of the sublet was stipulated to be $3600 per month.

In any case, the Appellant claimed that the Respondent owed $26,971 in overdue rentals and ancillary expenses, and $10,000 for a loan provided for a business venture.

The Learned Magistrate dismissed the Appellant's claims on the grounds that: –

[1] Magistrates' Court (Civil Appeals) Rules (Cap. 6, R. 1), rule 14(1)

a. the sub-tenancy agreement was invalid for want of written consent from the landlord;

b. the claims for overdue rentals were time-barred under the Limitation Act (Cap. 14); and

c. the evidence showed that the $10,000 loan had been repaid.

The Appellant now appeals, advancing grounds based on alleged fraudulent misrepresentation, inducement, undue influence, rectification of the agreement between the parties dated 21st February 2022 ('CSK2'), and an erroneous interpretation of the limitation period.

4. Grounds of appeal

The Appellant's grounds of appeal are summarised as follows: –

a. **Fraudulent misrepresentation:** The Respondent allegedly misled the Appellant into signing blank documents and a blank receipt.

b. **Inducement:** The Respondent's promises of financial gain induced the Appellant to act against his better judgment.

c. **Undue influence:** The relationship between the parties created a presumption of undue influence, which the Respondent exploited.

d. **Rectification of CSK2:** The Appellant argues that the term "profits" in CSK2 was a clerical error and should instead reflect overdue rentals.

e. **Time limitation:** The Learned Magistrate erred in ruling that the claim for overdue rentals was time-barred.

5. Issues

A. Fraudulent misrepresentation

The Appellant claims that the Respondent misrepresented the necessity of signing blank documents, allegedly to facilitate a business venture. However, the Learned Magistrate found that the Appellant's conduct – signing blank papers without seeking clarification – was inconsistent with that of a prudent businessman and that the Respondent's explanation for the documents was credible, supported by the testimony of DW1.

The Appellant's reliance on the Misrepresentation Act 1967 in his appellate submissions is misplaced, as this is a British piece of legislation that had come into force subsequent to the Application of Laws Act (Cap. 2). As such, the 1967 Act is not applicable in Brunei Darussalam. Nonetheless, section 17 of the Bruneian Contracts Act (Cap. 106) defines fraud as encompassing acts committed with intent to deceive, such as false statements or active concealment of facts.

I am further guided by the Court of Appeal of Singapore in *Panatron Pte Ltd & anor v Lee Cheow Lee & anor* [2001] SGCA 49 *('Panatron')*, that set out the elements of fraud at paragraph 14 as such: –

> *"The essentials of this tort have been set out by Lord Maugham in Bradford Building Society v Borders* [1941] 2 All ER 205*. Basically, there are the following essential elements. First, there*

must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by doing so. Fifth, the representation must be made with knowledge that it is false; it must be willfully false, or at least made in the absence of any genuine belief that it is true."

The evidence is sufficiently clear that the sum to which the alleged blank documents pertained to, being the $10,000, was a loan for which repayment had been made by the Respondent on 31st May 2022 at the 126 Café. It is the Appellant's case that the Respondent never made payment, denying even being at the 126 Café at the material time. However, the Respondent's testimony, along with that of DW1 at trial offers a coherent narrative that, in short, points to a repayment having been settled.

Accordingly, I cannot find any falsity in words or conduct to which the Appellant had fallen victim, nor can I find establish any intent to deceive on the part of the Respondent in seeking the loan. The Appellant's case does not satisfy either the definition as provided under the Contracts Act or the elements under *Panatron*. In such default, this ground of appeal must therefore fail.

B. Inducement

The Appellant argues that he was induced to act based on promises of financial gain. It is the Appellant's case that the Respondent led him to believe that compliance with the Respondent's will and instructions (i.e., to sign the alleged blank documents and receipt) would cause them both to yield profits. The Learned Magistrate, however, concluded that there was insufficient evidence to establish a causal link between the Respondent's promises and the Appellant's decision to sign the documents.

Section 18 of the Contracts Act provides that misrepresentation includes false assertions believed to be true that mislead another to their detriment. The Court of Appeal in *Panatron* further laid down under paragraph 23 that: –

"The misrepresentations need not be the sole inducement to them, so long as they had played a real and substantial part and operated in their minds, no matter how strong or how many were the other matters which played their part in inducing them to act […]. If inducements in this sense are proved and the other essential elements of the tort are also made out, as is the case here, then liability will follow."

Even under this lower threshold, the facts as presented by the evidence show, as discussed above, no falsity or misrepresentation, and so, the elements of inducement are not satisfied. I cannot therefore make a finding in favour of the Appellant if indeed he had signed blank documents, when any alleged loss (that, as pertains to the $10,000 loan, I cannot ascertain) could only have been caused by his own failure to exercise due diligence.

C. Undue influence

The Appellant asserts that the relationship between the parties created a presumption of undue influence of the Class 2B category as set out by the Court of Appeal of Singapore in *BOM v BOK & anor* [2018] SGCA 83 [101]. This category of undue influence only requires: –

"for the plaintiff to demonstrate (i) that there was a relationship of trust and confidence between him and the defendant; (ii) that the relationship was such that it could be presumed that the defendant abused the plaintiff's trust and confidence in influencing the plaintiff to enter into the impugned transaction; and (iii) that the transaction was one that calls for an explanation. […]

Under "Class 2B" undue influence, the plaintiff must prove that there is a relationship of trust and confidence. If it is shown that there was such a relationship and that the transaction calls for an explanation, then there is a rebuttable presumption of undue influence."

On this category of undue influence, I turn also to the Supreme Court of Victoria in *Union Fidelity Trustee Co of Australia Ltd v Gibson* [1971] VicRp 69 that noted in paragraph 10 (a) the following factors in establishing presumed undue influence: –

"The standard of intelligence and education, and the character and personality of the donor, are relevant matters. Age, state of health, blood relationship, experience, or lack of it, in business affairs of the donor, length of friendship or acquaintanceship between the donor and donee and the intricacy of their business affairs may be factors to influence a donor to depend upon the donee. Equally, the relative strength of character and personality of the donee, the period and closeness of the relationship and the opportunity afforded the donee to influence the donor in his business affairs are correlative considerations to the foregoing: see Clark v Malpas (1862) 4 De G F and J 401; [1862] Eng R 876; 45 ER 1238."

I highlight above all the intricacy of the business affairs as a consideration, accounting for the fact that the Respondent was an employee at the restaurant of which the Appellant was a proprietor. The Respondent is, in addition, a Malaysian national whose foreign worker license was at the material time held by the Appellant. The Appellant, effectively being the Respondent's employer, had control over his employment pass and, at a point in time, his national identity card. Copies of these three documents were exhibited as evidence by the Appellant himself as CSK10, CSK11, and CSK12 respectively.

I must further highlight that the Respondent testified to have lacked the capacity to read English and required the assistance of one Ah Yong for negotiations with the Appellant. If there were a relationship of trust and confidence between the two parties, these facts point to the Appellant being in the position to use this relationship to his advantage, as opposed to the Respondent. However, as this matter was not pleaded by the Respondent, I do not seek to impose any such liability on the Appellant and I merely raise the matter to note that the Appellant's claim of undue influence requires one to suspend disbelief.

I concur, therefore, with the Learned Magistrate in finding no evidence of a fiduciary-like relationship or abuse of trust, with the Appellant's actions reflecting independence rather than domination or exploitation by the Respondent.

D. Rectification of CSK2

The Appellant argues that CSK2 contains a drafting error, with the term "profits" inaccurately included and should instead reflect overdue rentals. He submits that CSK2, being an agreement for

the repayment of monies owed by the Respondent to him, could not have included a term pertaining to profits, the repayment of which he finds "commercially irrational and […] unworkable". This is especially so as the value of $26,971 ascribed to "50% profits" to be repaid does not reflect the variability of profits and is a precise match to the value of the alleged overdue rentals.

The Appellant therefore seeks rectification so as to give force to the agreement in such a way as the parties he submitted to have intended, arguing that there had been a common mistake for which equitable rectification should be granted. I am guided in this matter by the Court in *Daventry District Council v Daventry & District Housing Ltd* [2012] 1 WLR 1333, reformulating the requirements for rectification for common mistake laid down in *Swainland Builders Ltd v Freehold Properties Ltd* [2002] 2 EGLR 71 [74] by providing at paragraph 80 that: –

> *"[…] Peter Gibson LJ's statement of the requirements for rectification for mutual mistake can be rephrased as: (1) the parties had a common continuing intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified; (2) which existed at the time of execution of the instrument sought to be rectified; (3) such common continuing intention to be established objectively, that is to say by reference to what an objective observer would have thought the intentions of the parties to be; and (4) by mistake the instrument did not reflect that common intention*."

I find that the Appellant's case fails at the first requirement, as he had failed to prove that there was a common continuing intention in respect of the nature of the monies owed. Not only had the Appellant provided no evidence of the Respondent's understanding of the value of $26,971 being that of overdue rentals, the Respondent had also testified in court that he was under the belief that he was to pay the Appellant 50% of the profits from his business venture at the time of the execution, i.e., signing of CSK2.

I must note that the Respondent affirmed in his affidavit dated 16th January 2023 that he understood the value of $26,971 as 10% of profits, though I am inclined to believe the discrepancy in court to be a confusion, as the Respondent was thereafter informed by his counsel that CSK2 stipulated the payment of profits at the rate of 50%.

Furthermore, the contents of CSK2 evidently point to the proposed business venture, Cunz Tailoring and Souvenir, as the subject of the agreement. An objective observer would, therefore, readily take the value of $26,971 in CSK2 as 50% of the venture's forecasted profits, rather than alluding to a separate arrangement that was not at all referenced (being the sublease agreement), irrespective of the means of reaching such a precise value or the practicability thereof.

The documentary evidence being abundantly clear as to the nature of the value, I concur with the Learned Magistrate in finding that no extrinsic evidence should be admitted that contradicts, varies, adds, or subtracts from the contractual terms found in the very agreement. The parol evidence rule was correctly applied by her as pertains to the alleged preliminary negotiations and oral agreement, and I extend it to the particulars of arrears attached to the Appellant's Statement of Claim (CSK5 and CSK5A) in determining that these particulars cannot be used to vary the separate document of CSK2.

I therefore affirm the Learned Magistrate's finding that the Appellant failed to meet the burden for equitable rectification.

E. Time limitation

The Appellant lastly contends that the Learned Magistrate erred in finding the claim for overdue rentals time-barred. Specifically, the Appellant relies on CSK2 and WhatsApp text messages to argue that the demands made in 2022 reset the limitation period.

However, as discussed above, CSK2 refers to profits from the Respondent's proposed business venture and not overdue rentals, and so is immaterial to the sublease agreement and the period of limitation for claims therefor. Furthermore, the WhatsApp messages presented did not constitute valid demands for rental arrears, considering, as the Learned Magistrate correctly discerned, that they allude to other business arrangements that the parties engaged in at the material time.

I must once more note that the reliance on UK legislation, i.e., the Limitation Act 1980, is misplaced due to its inapplicability to Brunei Darussalam. Of more apt application is section 9 of the Bruneian Limitation Act (Cap. 14), which provides that actions founded on simple contracts must be brought within six years from the date of the accrual of the cause of action.

The cause of the Appellant's action for overdue rentals accrued in 2015. Seeing as the statement of claim was issued and filed in 2022, being seven years from the relevant date, the Appellant's claim is hence time-barred. The Appellant further failed to demonstrate any exception to or cause for the resetting of the limitation period under this provision.

Accordingly, this ground of appeal must also fail.

6. Conclusion

The Learned Magistrate's findings are well-reasoned and supported by evidence. Notwithstanding the misapplication of UK legislation to the present appeal, the conclusion still stands. The Appellant's arguments fail to satisfy the legal and evidentiary thresholds required under the relevant provisions of the Bruneian Contracts Act and Limitation Act, as well as those laid down in precedents.

As such, this appeal is dismissed in its entirety.

7. Costs

Accounting for the fact that both parties are litigants-in-person in this appeal and for the non-attendance of the Respondent, which has caused difficulties (that I deem to be deliberate) in proceeding with the matter, I am inclined to make no order as to costs.

8. Order

The appeal is dismissed and the decision of the Magistrates' Court is affirmed.

No order as to costs.

MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HAJI KEFLI
Judicial Commissioner