

**HJ MOHAMMED SHAHRI BIN HJ MOHD ALI
PG HJH SITI ZAILAN BINTI PG HJ SYED SHAHMINAN**

**... 1st Plaintiff
... 2nd Plaintiff**

AND

**WONG KHAI WAH
RAHUL RAMESH PUDUPULLY
WR GLOBAL HOLDINGS SDN BHD**

**... 1st Defendant
... 2nd Defendant
... 3rd Defendant**

**(High Court of Brunei Darussalam)
(Civil Suit No. 10 of 2018)**

**Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC
19th September 2022**

Civil Procedure – Tenancy Agreement – 1st and 2nd Defendant as an agent of principal which did not exist – no distinction or separation between D1 and D2 and the company – lifting the corporate veil – claim dismissed.

Case referred to:

Solomon vs Solomon and Solomon Co Ltd [1895-99] ALL ER Rep 33

Pengiran Izad Ryan Bin PLKD Pg Hj Bahrin (M/S Pengiran Izad & Lee) for the Plaintiff.
Mr. Loo Shyh Cherng Cedric (M/S Ridzlan Lim Advocates & Solicitors) for the Defendant.

JUDGMENT

Hj Abdullah Soefri, JC:

The P1 and P2 (1st and 2nd Plaintiffs') claim is in relation to a tenancy agreement, dated 16th May 2017. For property known as the Riviera hotel and Riviera restaurant, located lot number 106. Jalan Sungai Kuala Belait Brunei Darussalam.

The plaintiffs are the registered owners of the said premises and the named landlords in the tenancy agreement. The Defendants (1st and 2nd) in a statement of agreed facts, sign a tenancy agreement for and on behalf of the D3 (3rd defendant) as director of the D3.

I will not repeat the terms and condition of the tenancy agreement as this has been agreed in the statement of agreed facts.

It was also agreed that on the 18th May 2017, the third defendant was incorporated with the Registrar of Companies.

It was further agreed that on the 16th May 2017, D2 paid the first plaintiff a sum of \$50,000 paid P2 a sum of \$12,500. The accumulated payment of \$62,500 was partial payment of the deposit required under the clause i sub (1) of the General Conditions of the Tenancy Agreement.

It was agreed that a director's resolution was passed on the 19th of May 2017.

The plaintiffs receive a notice of termination of the Tenancy Agreement dated on 11th September 2017, signed by both D1 and D2.

The plaintiffs obtained judgment against the third defendant on the 21st July 2018, where it was adjudged that the third defendant do pay the plaintiff damages to be assessed, judgement interest of 6% per annum on the sum awarded to be calculated from the date of judgement until date of settlement, costs, legal fees on an indemnity basis.

It was agreed that the plaintiff commenced legal proceedings against first and second defendants in their personal capacities, and D1 and D2 are the directors and the only shareholders of the third defendant.

The plaintiffs have claimed against the first and second defendants on the following basis.

- 1) As D3 was not incorporated at the time of the Tenancy Agreement was signed, D1 and D2 having signed the same are personally bound by the tenancy agreement as agents or agents of a non-existent principle.
- 2) Alternatively, D1 and D2 control and determine the management of the D3 as being its directing mind and will and as such, They are not distinct from the third defendant and do not have separate legal personality or identity from the third defendant.
- 3) Further and in the alternative the third defendant never functioned as an independent entity, but was utilised by the D1 and D2 as a mere vehicle to facilitate the tenancy agreement or to be interposed between them and possible liability under the Tenancy Agreement;
- 4) Still further and in the alternative, the first and second defendants with the knowledge of D3 lack of means and capability as a tenant had dishonestly and fraudulently assisted the defendant in its breach of the Tenancy Agreement.

It was in evidence that the tenancy agreement was prepared by PW1's lawyer the late Mr. Kumar.

I am unsatisfied and disbelieved PW1 when he said in the cross examination that he did not know from day one, the defendant was WR Global holdings Sdn Berhad and disbelief him that the company name was never mentioned, and was only Mr. Wong and Mr. Rahul's names were mentioned.

PW1 was evasive, when it was put to him that he knew that the company was in the process of incorporation.

In the tenancy agreement prepared by the plaintiff's counsel, the agreement is between plaintiff one and plaintiff two as landlords and WR global holdings as tenants. and was duly signed initialised by both P1 and P2, and witness by Mr. Kumar. And D1 and D2 signed as director of the tenant WR Global holdings and witness by Mr. Kumar.

I am satisfied and agreed with the defendant in their submission, that looking at all the surrounding circumstances, that the plaintiff knew that the company was in the process of incorporation, and the counsel have known it, and thus the agreement was duly headed between the plaintiff and third defendants, clearly signed by D1 and D2 as director of the D3. This matter has been dealt with by P1's counsel and P1 is an experienced businessman.

I am satisfied that there is no evidence of any attempt to mislead or defraud the plaintiff and misled or defraud the plaintiff and D1 and D2 are mere intermediaries and the third defendant and not the undisclosed agents D3.

Section 31A of the Companies Act deals with Ratification by company have contracts made before incorporation.

As stated earlier, in the statement of agreed fact, a director's resolution was passed on the 19th May 2017. an in-depth resolution is stated ***"the signing of an agreement on behalf of the company and payment made to Tenancy Agreement"***.

I agree that the set resolution is conclusive evidence of rectification by the third defendant under Section 31A of the Companies Act and that D3 becomes bound and entitled to the benefit of the set agreement as if it had been in existence at the date of the agreement.

With regards to the lifting of corporate veil,

In ***Solomon vs Solomon and Solomon Company Limited [1895-99] ALL ER Rep 33***, it was decided that the company is an entity separate and distinct from its members who are liable only to be to the extent that I have contributed to the company's capital. As such, a company can be sued in his capacity as a separate legal entity.

A corporate veil may be lifted in exceptional situation, such as in cases of fraud, or a sham of the facade.

In this case, I do not see any exceptional situation. In this matter, the plaintiff alleges that D1 and D2 caused the P1 to enter into the Tenancy Agreement despite knowing the Defendant's inability to meet its obligations, the agreement was prepared upon Plaintiff's instruction to be signed on the date, time and place upon Plaintiff's instruction. Plaintiff is an experienced businessman and it wouldn't be surprised if Defendants caused the Plaintiff into the Tenancy Agreement without having to have made any due diligence.

Having accept all the above and I am dismissing all the Plaintiffs' claims and alternatives against D1 and D2 and order costs to D1 and D2 to be taxed if not agreed and legal fees on full indemnity basis.

A handwritten signature in black ink, appearing to read 'Haji Abdullah Soefri Bin Poksmdsp HJ Abidin'. The signature is fluid and cursive, with the first part being more prominent.

HAJI ABDULLAH SOEFRI BIN POKSMDSP HJ ABIDIN
Judicial Commissioner