ABD RAHIM BIN HAJI TALIP/HAJI TUAH … Plaintiff

AND

PG DATIN HAJAH ZAINAB BINTI PG HAJI ISMAIL … Defendant

(High Court of Brunei Darussalam)
(Civil Suit No. 6 of 2021)

Edward Timothy Starbuck Woolley, J.C.
Date of Hearing: 14th October, 2026.
Date of Reasons for Judgment: 14th October, 2026.

Headnote: Sale and purchase agreement in respect of land – failure by vendor and vendor's administratrix to complete transfer of land to Plaintiff – entitlement to specific performance.

Mr Eugene Loh Jit Kuan assisted by Mr Anlan Hee Tze Khow of Messrs Yusof Halim & Partners for the Plaintiff.
Defendant In Person (Absent).

REASONS FOR JUDGMENT

Woolley, J.C.:

The Plaintiff in these proceedings seeks an order for specific performance of a sale and purchase agreement, in which he is the purchaser, in respect of a piece of land in Kampung Mulaut, Mukim Sengkurong, Brunei Muara District, Brunei Darussalam (the land). The Defendant is the administratrix of the estate of Dato Paduka Dr. Haji Serudin bin Datu Setiawan Haji Tinggal (hereinafter called the deceased) who was the vendor.

2 The Defendant, who is now acting in person, was informed of the dates of hearing of this action, as well as the amended dates of hearing, by way of the addresses for service she had given to the court and the Plaintiff's solicitors, and by way of a message on WhatsApp to her telephone number. However, she did not appear at the hearing and I gave leave for the matter to proceed in her absence. After hearing the evidence of the Plaintiff and submissions, I gave judgment in favour of the Plaintiff for:

a) a declaration that the Plaintiff is beneficial owner of the land;

b) an order for specific performance of the sale and purchase agreement including but not limited to:-

(i) an order compelling the Defendant to attend to and/or cause and/or effect the execution of all such relevant documents as shall be necessary and/or expedient

and/or take all necessary steps as may be required/expedient to give effect to the transfer of the registered ownership of the land to the Plaintiff; and

(ii) in the event that the Defendant fails to comply with the order set out at (b)(i) above within 7 days from the date of service of this order, a Registrar of the Court shall be empowered to execute any such memorandum of transfer/charge/lease/sub-division application and/or such other documents as shall be necessary and/or expedient to give effect to the said transfer;

c) the Plaintiff is at liberty to apply for further orders and/or directions as may be required;

d) costs of the action be to the Plaintiff on an indemnity basis.

I now give my reasons for this judgment.

3 The events giving rise to this action begin in June 2016 when the deceased, who died in September 2018, approached the Plaintiff and offered to sell the land to him. He told the Plaintiff that he was the sole owner of the land and that it was free of encumbrances. He also said that there had been a previous agreement to transfer the land to one Haji Japar bin Datu Setiawan Haji Tinggal, the deceased's brother, but that the application to transfer the land (the first application) had been withdrawn and that his brother had no objection to that. This was confirmed by a letter from the Lands Department dated 30 June 2016 to the deceased acknowledging the cancellation of the transfer, which was also copied to the deceased's brother. However, he had died in March 2016, but none of his family responded to this letter if they were aware of it.

4 In reliance on these representations, the Plaintiff entered into the agreement to purchase the land for B$88,000.00. The Plaintiff says that he understood, and it can be implied to give effect to the agreement, that the deceased would take all necessary steps to effect the transfer of ownership of the land to the Plaintiff upon payment of the purchase price. This was paid by the Plaintiff to the deceased by way of two payments of B$44,000.00. The first on the day following the signing of the agreement and the second on 18 August 2016. These payments were acknowledged in writing by the deceased.

5 On 24 August 2016 the Plaintiff and the deceased signed the necessary documentation at the Lands Department in respect of the application to transfer the property to the Plaintiff. Nothing seems to have happened then until 18 January 2017 when the Lands Department informed the Plaintiff by letter that the application was postponed as they had received a letter from the family of the deceased's brother objecting. The matter was then, in August 2017, referred to the Attorney General's Chambers by the Lands Department for advice, and by a letter to the deceased on 14 May 2018 he was advised that the earlier withdrawal of the first application had been revoked as they required confirmation of the brother's administrators.

6 On 21 September 2018 the deceased passed away and on 28 May 2019 the Defendant was appointed administratrix of his estate.

7 By a letter dated 24 April 2020 the Plaintiff's lawyers asked the Lands Department to assist in the transfer of the land as there had been no action by the brother's administrators or his family to make any claim to the land but, on 17 June 2020, the Lands Department replied that the first application had to be withdrawn before they can process the second, to the Plaintiff. The Plaintiff's

lawyers accordingly requested the Defendant, by a letter dated 14 July 2020, to provide the required confirmation to the Lands Department. The Defendant, in her re-amended defence, claims that she never received this letter which she said may have been delivered to the wrong address. There being no response to this letter this action was commenced on 18 January 2021.

8 The Defendant's re-amended defence largely admits the sequence of events set out in the statement of claim but, as a result of what is claimed as non-receipt of the letter of 14 July 2020, denies failing to provide the requested confirmation. Further, it is pleaded in the re-amended defence that reasonable efforts were made to procure a written confirmation from the late brother's representatives and beneficiaries to withdraw the first application, but without success. This is in spite of paragraph 12 of the re-amended defence, which states that in December 2019 the daughter of the Defendant was informed by the widow of the brother that she had no objection to the second application relating to the Plaintiff's purchase. However, it appears that the late brother's administrator did write to the Defendant's then solicitors in July 2021 to the effect that the beneficiaries would not consent to the to the withdrawal of the first application as the brother had paid B$60,000.00 to the deceased who had failed to execute the transfer documents and had requested a further B$17,000.00 to do so. Since then, the administrators of the brother's estate do not appear to have taken any steps to pursue the matter, and, indeed, neither has the Defendant apparently made any effort to resolve the issue.

9 As I have said, the Defendant did not appear at the trial and has taken no action in these proceedings since her solicitors were discharged from acting on her behalf on 24 April 2025. No documents have been filed by her since and there has been no affidavit evidence in chief from her. The only evidence I have therefore is that of the Plaintiff, and the documents produced by him. From this it is clear that there was a binding agreement between him and the deceased for the purchase of the land, and the Plaintiff had carried out his obligations thereunder by paying the agreed purchase price and making himself available to execute the necessary documents of transfer. The deceased however failed to complete his obligations. I appreciate that this was complicated by the previous agreement to sell to his brother, but the fact remains that this was a binding agreement and the necessary steps to effect a transfer of the property were not taken by the deceased, or by the administratrix of his estate, the Defendant. Even if the Defendant did not receive the letter of 14 July 2020, she has had ample opportunity since she was aware of these proceedings, for much of the time legally represented, to put matters right but has failed to do so. Similarly, the administrators of the brother's estate, apart from their letter to the Defendant refusing to consent to the application for transfer to the Plaintiff in 2021, appear to have taken no steps to pursue their claim.

10 In the light of the above I am satisfied that the Defendant and, prior to his death, the deceased, are in breach of a clear contract, and the Plaintiff is entitled to the relief sought.

11 As to costs, the Plaintiff is also entitled to the costs of the proceedings which, in view of the lack of cooperation on the part of the Defendant which has largely been responsible for the time it has taken to get to this stage, it is my decision that they be taxed on an indemnity basis.



EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner