WYWY CONTRACTOR **… Plaintiff**

AND

DAYANGKU ROSINAH BINTI PENGIRAN BAKAR **… Defendant**

(High Court of Brunei Darussalam)
(Civil Suit No. 76 of 2021)

Edward Timothy Starbuck Woolley, J.C.
Date of Hearing: 22 October, 2, 3 and 4 November, 2026.
Date of Judgment: 5 November, 2026.

Headnote: Action for specific performance of land development agreement – defence of fraudulent misrepresentation inducing owner to enter into agreement – representation as to amount of land able to be built on – failure to show representation was false or did not fall within exemption in section 19 of the Contracts Act, Cap106.

Mr Eugene Loh Jit Kuan and Mr Anlan Hee Tze Khow of Messrs. Yusof Halim & Partners for the Plaintiff.
Mr Sheikh Noordin bin Sheikh Mohammad of Sheikh Noordin Mohammad & Associates for the Defendant.

JUDGMENT

Woolley. JC:

These proceedings concern a development agreement in respect of a piece of land described in the statement of claim as EDR No. BD 40336 Lot No. 45239 at Kampung Sungai Hanching, Mukim Berakas (B), Brunei Muara District, Negara Brunei Darussalam being an area of approximately 5.003 acres of which the Defendant is the leasehold owner. Prior to 27 March 2019, the owner of the land had been the Defendant's father, Pengiran Bakar bin Pengiran Haji Sulaiman (the previous owner). On that date the title to the land was transferred to the Defendant, the previous owner having already, by a novation agreement dated 4 September 2018, novated all his rights and obligations under the development agreement to the Defendant.

2 The Plaintiff is in the business of development and construction.

3 On 21 March 2013, the Plaintiff and the previous owner entered into a development agreement in respect of the land, the relevant terms of which may be briefly stated as, the Plaintiff undertaking to bear the cost of building 5 semi-detached houses which would remain the property of the owner, and paying the previous owner the sum of B$170,000.00, the rest of the land would

be transferred to the sole ownership of the Plaintiff. It was also provided in the development agreement, in clause 16, that the landowner would render such assistance as may be necessary in respect of the interests acquired by the developer in respect of his part of the land and sold to purchasers.

4 In early 2019, the Plaintiff proposed a revised subdivision of the land to make the development more economical and to include an additional access road, which slightly increased the owner's share of the land, leaving the balance, including a revised layout of a part of the land marked on the plans as Plot X, the relevance of which I will deal with below, to the Plaintiff. This was recorded and agreed by the Defendant by way of a deed of trust dated 4 April 2019.

5 In compliance with the development agreement, on 7 February 2020, following completion of a number of the properties built on the land, the Plaintiff gave the keys of the owner's properties to the Defendant on 28 April 2020.

6 Meanwhile, on 14 August 2019, the Plaintiff sold the revised Plot X to Chaiho bin Rifin (the purchaser) for the sum of B$380,000.00, and requested the Defendant to attend the office of the previous owner's lawyer to execute the necessary documents to transfer the ownership of Plot X to the purchaser, which she failed, and continues to fail, to do, and the Plaintiff now claims an order for specific performance to compel her to do so.

7 In the defence it is pleaded that the development agreement was negotiated on the basis of the Plaintiff's assertion that approximately 2 acres of the land, Plot X, could not be developed owing to the hilly terrain of adjacent land and the need to undertake sloping works. It was also pleaded that this assertion was a false representation made fraudulently to induce the Defendant and her father to accept a lesser share of the development in the belief that some 2 acres of the land could not be developed. It is further pleaded that, had they known that all 5 acres of the property could be developed, they would not have accepted only 5 semi-detached houses, rather than the detached houses they wanted, and the B$170,000.00. The Defendant now claims return of Plot X or a share in the development of Plot X, and/or damages, including damages for fraudulent misrepresentation.

8 Before proceeding further, it must be noted that the pleaded case in the defence as to Plot X refers, in paragraphs 12 and 13, to alleged representations that 2 acres could not be developed. However, it is clear from the plan of the site attached to the development agreement that Plot X at this stage is 1.2 acres, and the plan includes Plots 1 to 6 next to it, intended to be some of the properties to be developed and owned by the Plaintiff. The reference to 2 acres can only be in respect of Plot X after the revision in April 2019 when the area intended to be occupied by the Plaintiff's Plots 1 to 6 was added, being an area of some 0.8 of an acre. There has been no suggestion that this latter area cannot be developed, as was originally intended.

Misrepresentation

9 I now turn to the allegation by the Defendant of misrepresentation. The first matter for consideration here is what, if any, representation was made by or on behalf of the Plaintiff prior to the execution of the development agreement. Mr Thien Soon Yu (Mr Thien) of the Plaintiff, in his evidence, said that he had negotiated the development agreement with the previous owner on the basis that the portion marked on the plan annexed to the agreement and named Plot X, measuring some 1.2 acres, was uneconomic for him to develop because of the nature of the terrain

and that it was *bumiputera* land, meaning it could only be passed to Brunei citizens. He did not deny in evidence that the land could be developed, but said to do so would have cost a lot and he would have lost on the project. His view was that it was purely an economic decision and not intended to mislead.

10 The evidence of the Defendant was that the family had decided to develop the land and some time in 2002 or 2003 and took steps to clear and level the land, employing surveyors, architects and contractors to undertake the works. From the evidence it appears that they had difficulty in finding an interested developer for some years until they were put in contact with the Plaintiff in 2012. Negotiations were conducted through a broker, Pg Martini binti Pg Hj Tahir (Pg Martini), and the Defendant says they were told that part of the land could not be developed because of sloping on one side of the land. She says that it was because of this that they agreed to accept 5 semi-detached properties as their share plus a payment of B$170,000.00, instead of the 6 detached properties they originally required.

11 The Defendant's husband, Asmahkhan bin Mulkiaman (Asmahkhan), gave evidence that he had been closely involved in the discussions in the family about developing the land, had been active in obtaining approvals from the relevant authorities as well as sourcing and engaging surveyors and contractors for the purpose of doing earthworks, leveling and sloping works between 1999 and 2003, and produced invoices and receipts to show the work that had been carried out. Failing to find any interest in the land, between 2003 and 2011 there was little activity, but he said that in 2011 his father in law, the previous owner, gave him and the Defendant joint power to deal with the development of the land so he began to source developers and came into contact with the Plaintiff through Pg Martini. He says it was the latter who conveyed to him the Plaintiff's view that the whole of the land could not be developed because of the need to do sloping along adjacent land, and this was repeated by Mr Thien when he met him. It was in view of this, he said, that the family agreed to the terms which were included in the final agreement.

12 Pg Martini agreed that she had been part of the negotiations between the Plaintiff and Asmahkhan and had been told by the Plaintiff that it may not be commercially viable to develop the land. However, she said that she had never represented that the land could not be developed. Indeed, she went on to say that she had never seen land that could not be developed. The issue was whether it was commercially viable to develop.

13 There is no written evidence of what transpired during this time, only the memory of witnesses of conversations during negotiations. I have to say that I prefer the evidence of Pg Martini as to what was conveyed about the viability of developing all the land. She has no personal interest in this dispute, acting as she was as an independent broker, which I accept. Her evidence in respect of no land being impossible to develop rings true in the light of her long experience of development land and her role in negotiating between owners and developers. I consider it more likely that what was understood by the Defendant and her family was a strong inclination by the Plaintiff not to attempt development of the part of the land known as Plot X because of the difficulties of the terrain, making it economically unrealistic. Clearly a representation was made to the effect that it was at the very least difficult and/or uneconomic to develop the 1.2 acres of Plot X and that the Plaintiff had no interest in doing so.

14 The next question is: was that representation false? To establish that, the Defendant has to show that the original Plot X could be developed and that the Plaintiff knew this at the time of the development agreement with the previous owner. No evidence has been put forward by the

Defendant as to the viability of this piece of land for development. There has been no expert evidence showing whether it can be developed, and to what extent. No surveyors or other contractors have been called to give their opinion on the matter. In short, I have been given nothing to support any contention that the land in question could be treated in the same manner as the 3 acres which were developed by the Plaintiff. The Defendant relies entirely on the sale of Plot X to the purchaser in 2019, and the words "Phase 2" on the plan attached thereto, as evidence in this respect. With respect, this only shows a sale. Although it is pleaded in paragraph 15 of the defence that: "...the Plaintiff now intends or proposes to develop the aforesaid 2 acres...", there is no evidence of what, if any, development is planned by the Plaintiff or the purchaser, and certainly not on the original Plot X which is the subject of this action. There is no evidence that the Plaintiff will gain any benefit from any development by the purchaser, except as to the purchase price, and I have similarly been given no evidence that the sum paid reflects a premium to include a benefit from development. In any event, the revised Plot X, as sold to the purchaser, includes the portion of land upon which the Plaintiff intended to build Plots 1 to 6, and there has been no representation or suggestion that this cannot be used by a purchaser for development as was originally planned by the Plaintiff.

15 I am left with the conclusion that I am unable to find that, on the evidence presented to me, even if any representation was made as alleged by the Defendant, that the representation was false or untrue and, as to the allegation of fraud, that Mr Thien of the Plaintiff knew it to be false or untrue, pursuant to the provisions of sections 17 and 18 of the Contracts Act, Cap 106.

16 There is one other matter which I will also look at under the provisions of that Act, which is the exception under section 19. This section provides the remedies for a party whose consent to an agreement was caused by coercion, fraud or misrepresentation. However, it also contains an exception which reads as follows:

> "*If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence*."

The Defendant and her husband, who were dealing with the matter of the land over some years on behalf of the previous owner, are both clearly intelligent well-educated people. The Defendant had been employed until her retirement with Brunei Shell Petroleum in technical data management, and her husband had been a supervisor in a company, also admitting to some experience in land matters. They had previously engaged surveyors and architects when preparing the land for development, and could well have called on those experts, or others, if told by a contractor that some of the land could not be developed, to advise them as to this. They did not do this, apparently, on their evidence, accepting what they were told by a complete stranger. I find that they fall well within the scope of the exception, being able to have discovered the truth about the land with ordinary diligence.

Conclusion

17 For the reasons above I find that the Plaintiff is entitled to the relief sought in the statement of claim under the development agreement dated 21 March 2013, the only defence put forward being that of misrepresentation which I find has not been established. I therefore give judgment for the Plaintiff in terms of (a), (b) (i) and (ii) and (e) of the prayer of the statement of claim and I dismiss the counterclaim. Although the Plaintiff seeks indemnity costs, I find no compelling

reasons to take this step, and I also order that the Plaintiff's costs be taxed and paid by the Defendant on the usual basis, unless agreed.



EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner