

DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU
DALAM NEGERI JOHOR BAHRU
NO. GUAMAN: JA-22NCvC-103-07/2021

ANTARA

BADAN PENGURUSAN BERSAMA APARTMENT
NUSA PUNCAK

...Plaintiff

DAN

ALL STRATA SDN BHD

...Defendant

GROUND OF JUDGMENT

[After the full trial]

Brief background

[1] As a brief background, Nusa Puncak Apartment ("**Apartment**") which is also known as Nusa Heights Service Apartment is located at Jalan Gelang Patah, Taman Nusa Puncak, Johor, consisting of 5 blocks of apartment and comprising in total of 910 parcels. The Apartment was developed by a licensed developer known as Mahabuilders Berhad ("**Mahabuilders**").



[2] Before the Apartment was open for sale and as part of the sales promotion, Mahabuilders had offered to all purchasers a few incentive packages including a rebate on the purchase price and legal fees, furniture package and free maintenance package (“FMP”). Under the FMP, the purchasers would be given three years waiver of service charge and contribution to the sinking fund and Mahabuilders undertook to pay on behalf of the purchasers the service charge and contribution subject to a maximum of RM0.25 cents per month per square foot multiplied by the area of the parcel for three years from the date of Certificate of Completion and Compliance (CCC) of the parcel, subject to the condition that the purchasers must pay the service charge for four months in advance to Mahabuilders and the contribution to the insurance premium and quit rent.

[3] After the sale and purchase agreement entered into between Mahabuilders and individual purchaser, the former issued a standard letter offering the incentive packages to the latter. The FMP in the standard letter reads as follows:

Free Maintenance Package

(d) *we (Mahabuilders) shall pay you on your behalf the service charges and sinking fund (excluding insurance premium, quit rent and other payment) of the Parcel ('Free Maintenance Package') subject to a maximum total sum of Sen Twenty Five (RM0.25) only per month per square foot multiply by the area of the Parcel (excluding the area of the accessory parcel) ('Maximum Contribution') for a period of three (3) years only from the date of the Certificate of Completion and Compliance of the Property ('FMP Period')*



[4] The vacant possession of the Apartment was surrendered to the purchasers in 2015.

[5] On or about July 2015, Mahabuilders had appointed MB Supply Sdn Bhd ("**MB Supply**") to manage the Apartment. Mahabuilders, via a letter, also informed the purchasers about the appointment.

[6] On 8.3.2016, Mahabuilders was wound-up voluntarily by way of members' resolution.

[7] On 28.4.2016, Mahabuilders through its liquidator (as the donor) executed a power of attorney ("**PA 2016**") in favour of MB Supply (as the donee) in respect of all development projects undertaken by Mahabuilders including the Apartment.

[8] On 30.8.2016 the Plaintiff was established under the Strata Management Act 2013 as the Joint Management Body of the Apartment.

[9] On 13.9.2016, MB Supply changed its name to All Strata Sdn Bhd (the Defendant).



[10] The Defendant vide its letter dated 15.12.2017 informed the Plaintiff that pursuant to the terms in the incentive packages, the company would release the remaining amount payable by 31.12.2017 to the Plaintiff. Accordingly, as at January 2018, the Defendant had paid more than RM3.576 million to the Plaintiff. However, the Plaintiff avers that the amount is RM3.67 million less than what was promised by the Defendant. The Plaintiff asserts that the Defendant failed to make payment based on the rate of RM0.25 cents per square foot as stipulated in the FMP.

[11] Consequently, the Plaintiff through its solicitors demanded the Defendant to pay the balance of the covenanted contribution sum.

[12] On 26.7.2021, the Plaintiff filed the Writ and Statement of Claim against the Defendant to recover the sum of RM3,670,126.00 being the balance sum due and payable by the Defendant pursuant to the PA 2016 in respect of the FMP.

[13] The Defendant, in refuting the Plaintiff's claim, denies the existence of any obligation to pay any such sums to the Plaintiff based on the following grounds, *inter alia*:

- (a) there is no proof that the FMP was offered to all purchasers of the Apartment;



- (b) the Plaintiff has no *locus standi* to bring this suit as the company is not the party issuing the letter containing the FMP; and
- (c) the Defendant was merely an agent of Mahabuilders and cannot be sued.

[14] A full trial for this suit was conducted where the Plaintiff called its chairman, Mustaffa bin Ali @ Mustaffa Lim as the only witness while two witnesses namely Chen Chee Yong (the Defendant's Assistant Property Management Manager) and Lai Ching Ann (the Defendant's Senior Account Executive) appeared for the Defendant.

Whether the FMP was offered to all purchasers of the Apartment

[15] In denying the Plaintiff's claim, the Defendant avers that there is no evidence to suggest that the FMP was offered to all purchasers.

[16] On this issue, I find para 6 of the Statement of Agreed Facts states that the purchasers had been given the exemption from paying the service charge and contribution to the sinking fund for a period of 3 years. The said Para 3 reads –

- 6. *Pembeli-pembeli telah diberikan pengecualian daripada membayar caj perkhidmatan dan caruman kepada Kumpulan wang penjelas untuk tempoh tiga tahun.*



[17] The gist of this exemption is undoubtedly in line with the FMP. Although the Defendant argues that the statement does not mention the word “FMP”, looking at the content of the statement, it is clearly in accordance with Mahabuilders’s covenant in the FMP (see *para [3] above on what is stated in the FMP*).

[18] Further, Chen Chee Yong (DW1) during the cross examination agreed that the FMP was offered to all purchasers. DW1 said (see *page 109 of the Notes of Proceeding*) –

*PP: Ok. Now, around the same time when Mahabuilders sold this unit, signed the sale and purchase agreement with the purchasers, **Mahabuilders also issued an incentive package to all the purchasers** and that package is the standard package letter is shown at page 77. Agree?*

DW1: Agree.

[19] As such, I find that the Defendant’s averment that the FMP was not offered to all purchasers of the Apartment, is baseless.

Whether the Plaintiff has no *locus standi* to bring this suit

[20] The Defendant asserts that the letter containing the FMP was issued by Mahabuilders to all purchasers and not by the Defendant.



Thus, the Plaintiff has no *locus standi* to bring this suit against the Defendant.

[21] On this issue, I find that although the Defendant was first appointed by Mahabuilders as the managing agent for the Apartment, later by virtue of the PA 2016 executed by Mahabuilders (in liquidation) in favour of the Defendant, the Defendant had stepped into the shoes of Mahabuilders and assumed as well as undertaken the rights and obligations of Mahabuilders in respect of the Apartment.

[22] It is pertinent to note that the existence of the PA 2016 is not denied, disputed or even challenged by the Defendant. The relevant clauses of the PA 2016 which relate to assumption of rights and obligations of Mahabuilders in respect of the Apartment by the Defendant are as follows:

WHEREAS

(1) ...

(4) *The Donor is desirous of granting to the Donee this Power of Attorney to enable the Donee to carry out on its behalf all matters and actions for or in respect of the Development.*

NOW THIS POWER OF ATTORNEY WITNESSETH as follows:

(A) *The Donor hereby nominates, appoints and constitutes (a) the Donee; and/or (b) persons as may be nominated by the board of directors of the Donee and each of them jointly and also severally to*



be the Donor's true and lawful attorney ('Attorney') (with full powers of substitution and delegation) to act jointly and also severally for the Donor and in the Donor's name or otherwise on the Donor's behalf to jointly and severally do, whenever necessary or required, al or any acts, deeds and things that the Donor may or authorised to do whether in respect of the Development or otherwise or without prejudice to the generality of the forgoing including the following:

1. To take charge of, manage, develop and improve the Development for such purpose, to such extent, in such manner and of such nature as the Attorney may in its absolute discretion think fit.
2. To decide upon, effect and carry out all matters whatsoever relating to the Development.
3. To appear before and communicate, deal and liase with and to negotiate and/or arrive at such agreement, arrangement, settlement or compromise with all persons and authorities whomsoever and whatsoever in connection with the Development.
- ...
20. To exercise and enforce all rights, benefits, powers, remedies and privileges which now or hereafter may vest in or appertain to the Donor in relation to the Development.
21. To liase and negotiate with and arrive at, assent to and/or enter into any settlement, compromise, arrangement or agreement with any person in connection with the Development.



[23] The assumption of Mahabuilders's obligation was further affirmed when the Defendant paid the four months advance totalling RM805,208.00 to the Plaintiff in May 2017 despite Mahabuilders was wound-up on 8.3.2016. Not only that, the Defendant again made additional eight payments totalling RM3,576,746.00 between January 2017 to January 2018 to the Plaintiff (these were within the FMP period). Thus, a question arises, why did the Defendant make those payments if not because of the company assumed the role of Mahabuilders?

[24] Furthermore, the Defendant on 15.12.2017 issued a letter to the Plaintiff in which the Defendant was referring to the FMP and had agreed to pay the sums payable. Below is the Defendant's letter for ease of reference –



119

ALL STRATA SDN. BHD.

(Co. No. 594957-A)

Badan Pengurusan Bersama Apartment Nusa Puncak
Apartment Nusa Puncak
Jalan Gelang Patah,
Taman Nusa Puncak,
8150 Gelang Patah, Johor.

Date: 15 December 2017

Attn: Bent Christensen

REF: Balance Amount of Free Maintenance Package

We refer to the matter above.

2. Based on the incentive letter which stated:

"We shall pay on your behalf the service charges and sinking fund (excluding insurance premium, quit rent and other payment) of the Parcel ('Free Maintenance Package') subject to a maximum total sum of Sen Twenty Five (RM 0.25) only per month per square foot multiply by the area of the Parcel (excluding the area of the accessory parcel) ('Maximum Contribution') for a period of three (3) years only from the date of the Certificate of Completion and Compliance of the Property ('FMP Period')."

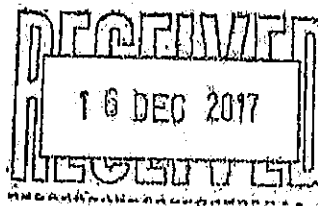
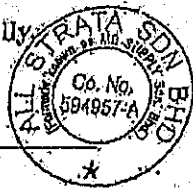
The end of 'Free Maintenance Package' period and monthly maintenance fee and sinking fund are summarized as below:

No.	Site	Period	Monthly Maint. Fee + Sinking Funds	Balance Maint. Fee + Sinking Funds
1	Nusa Height - Blk A & B	Nov'17 ~ Jul'18	RM63,558.40	RM572,025.60
2	Nusa Height - Blk C, D & E	Nov'17 ~ Sept'18	RM97,483.20	RM1,072,315.20

3. Hence, we are informing you that All Strata Sdn. Bhd. will release the remaining amount of RM 1,644,340.80 to JMB Nusa Puncak by 31st Dec 2017. If you have any inquiries regarding the arrangement, please write to us at cychen@stratawin.com.my

Yours faithfully,

Chen,
Property Management Manager,
All Strata Sdn. Bhd.



[25] As a result of the letter, the Defendant had paid the Plaintiff the sums of RM322,082.40 on 9.1.2018 and RM1,322,258.40 on 19.1.2018. A question arises - if the Plaintiff has no legal standing to receive the FMP sum as contended by the Defendant, then why the Defendant made such payments to the Plaintiff? Hence, it is my considered view that the letter issued and payments made by the Defendant show that the Defendant had not disputed its responsibility to pay the Plaintiff in respect of the FMP despite the letter containing the FMP was issued by Mahabuilders.

[26] I find also the Defendant's conduct of making the payments to the Plaintiff was an implied contract to pay by the Defendant to the Plaintiff (upon assumption of Mahabuilders's obligation pursuant to the power of attorney). It is trite that a contract may be implied from the parties' conduct. In *Kondisi Utama Sdn Bhd v. Baltic Agencies Pte Ltd and another appeal* [2018] 9 CLJ 561; [2019] 1 MLJ 181, the Federal Court underscored that the conduct of the parties are relevant in finding an implied contract. Zaharah Ibrahim FCJ (later CJM) speaking for the apex court held –

[74] The Court of Appeal held that "these contracts are contracts implied in fact. A contract implied in fact is not expressed by the parties, but rather suggested from the facts and circumstances that indicate a mutual intention to contract. Circumstances exist that, according to the ordinary course of dealing and common understanding, demonstrate such an intent that is sufficient to support a finding of implied contract. We found this to be the case based on the evidence



before the court". The Court of Appeal quoted the following passage from Chitty's on Contract:

Agreement is not a mental state, but an act, and as an act, is a matter of inference from conduct. The parties are to be judged not by what is in their minds but by what they have said or written or done.

[75] Was the Court of Appeal correct in making the finding that implied contracts subsisted between the parties? Unfortunately, in their broad grounds, the Court of Appeal did not explain the reasons for their finding. Therefore, we need to examine the relevant oral and documentary evidence, in particular the conduct of the parties, in order to answer that question.

[27] In light of the above, I find that by virtue of the PA 2016, the Defendant's conduct in agreeing to make payment pursuant to FMP and the payments made by the Defendant to the Plaintiff, a reasonable inference may be drawn that the Defendant had stepped into the shoes of Mahabuilders and assumed all Mahabuilders's rights and obligations of in respect of the Apartment. By its own conduct, the Defendant is therefore estopped from denying that it has the duty-bound to discharge Mahabuilders's covenant toward the purchasers. Hence there is no doubt that the Plaintiff has *locus standi* to bring this suit against the Defendant.



Whether the Defendant was merely an agent of Mahabuilders and cannot be sued

[28] The Defendant contends that the PA 2016 only empowers the company to act on behalf of Mahabuilders as its authorized agent in the manner stated therein. Hence, the Defendant submits that being an agent of Mahabuilders, by virtue of s. 183 of the Contract Act 1950, the Defendant cannot be sued by the Plaintiff.

[29] On this issue, I agree with the Plaintiff that there is nowhere in the PA 2016 suggesting that the Defendant is an agent of Mahabuilders. Instead, the wide powers, rights, benefits, remedies and privileges given to the Defendant in the PA 2016 clearly establish that the Defendant had stepped into the shoes of Mahabuilders and taken over the rights and obligations of that developer in respect of the Apartment.

[30] In addition to the above, I find that clause 17 of the PA 2016 authorizes the Defendant to commence proceedings or defend against proceedings in respect of the Apartment. Clause 17 of the PA 2016 reads—

17. *to appear in any court or at any tribunal or hearing or arbitration proceedings and **to commence or defend** or appeal against any proceedings therein whatsoever **in connection with any of the matter referred to in this Power of Attorney.***



[31] The Court of Appeal through Abdul Malik Ishak JCA in *Syarikat Binaan Utara Jaya (A Firm) v. Koperasi Serbaguna Sungei Glugor Berhad* [2009] 1 CLJ 786; [2009] 2 AMR 50, laid down the pertinent guidelines when interpreting any contract as follows:

[14] ***It is trite law that the words used in a contract must be interpreted literally and without the aid of the principles of natural justice (Jainarain Singh and another v. The State of Bihar and Others [1980] AIR Vol 67, 24 Patna). And the court in order to avoid superfluity must give effect to every provisions of the contract. The court cannot construe words in an entirely different sense from their natural and grammatical meaning. Thus, the word "when" could not be read as "if". It must be borne in mind that the court cannot give meaning to a provision totally contrary to the meaning which it bears in plain language (F Ranchoddas v. Nathmal Hirachand & Co [1949] AIR (36), 356 Bombay).***

[15] ***Of course, it is trite that when interpreting a contract the language of the contract must be taken into consideration. The intention of the parties must be primarily gathered from the language employed in the contract itself. If, and only if the language is vague, the surrounding circumstances may be looked into in order to assist in interpreting the contract (Bipin Behari Deb v. Masrab Ali and Others [1961] AIR Vol 48, 173 Assam).***

[17] ***From the available authorities, the following proposition may be advanced in construing a contract where the language employed is clear:***

- (a) ***the court must give effect to the plain meaning of the words, no matter how distasteful the result may be (The***



Central Bank of India Ltd Amritsar v. The Hartford Fire Insurance Co Ltd [1965] AIR Vol 52, 1288 SC);

- (b) ***where the language in the document is unambiguous and clear, the real nature of the document is to be determined solely by looking at its contents, uninfluenced by any intention of the parties ((Nawab major Sir) Mohammad Akhbar Khan v. Attar Singh and Others [1936] AIR Vol 23, 171 PC);***
- (c) ***when the mind of the parties are expressed in an unambiguous manner, the court cannot override the declared intention of the parties unequivocally expressed (K Appukuttam Panicker and Another v. SKRAKR Athappa Chettiar and Others [1966] AIR Vol 53, 303 Kerala); and***
- (d) ***there is no scope, at all, for drawing upon hypothetical consideration or the supposed intention of the parties when the words contained in the contract are clear and unambiguous (The Union of India v. Kishorilal Gupta and Bros [1959] AIR Vol 46, 1362 SC)."***

[32] Back to the present suit, looking at the PA 2016, I find that the words and terms used therein are clear so that I can establish that the actual intention of its donor is none other than the Defendant had to replace in toto Mahabuilders which was in liquidation.



[33] In view of the foregoing, the Defendant's contention that it cannot be sued by the Plaintiff in relation to the PA 2016, is unfounded.

Conclusion

[34] Based on all the reasons explained above, I find that the Plaintiff has successfully established that the Defendant had stepped into the shoes of Mahabuilders and had the responsibility to carry out the covenant made by Mahabuilders towards the purchasers. As such the Plaintiff's claim is allowed with costs.

Date: 20.10.2025



(Shamsulbahri Bin Haji Ibrahim)

Judge,

High Court Of Malaya,

Johor Bahru

For the Plaintiff: R. Jayabalan
Christopher Tan
Messrs R. Jayabalan

For the Defendant: Chen Wai Jun
Messrs WJ Chen & Company

