DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM

DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA

SAMAN PEMULA NO: BA-24NCVC-1463-10/2019

Dalam Perkara mengenai suatu Perjanjian Jual Beli bagi seunit kedai dua setengah tingkat beralamat di No. 1, Jalan 8/1E, 46050 Petaling Jaya, Selangor yang terletak di bawah tanah pajakan hakmilik sementara HS(D) 163769, Lot 1 Seksyen 8 Bandar Petaling Jaya Daerah Petaling Negeri Selangor;

Dan

Dalam Perkara Seksyen 26 Akta Kontrak, 1950;

Dan

Dalam Perkara Seksyen 57 Akta Setem, 1949;

Dan

Dalam Perkara Seksyen 24 Akta Cukai Keuntungan Harta Tanah 1976 (Akta 169);

Dan

Dalam Perkara Seksyen 417 Kanun Tanah Negara, 1965.

ANTARA

LOW SEE HEE & SONS REALTY SDN BHD
(NO. SYARIKAT : 30221-K) ...PEMOHON

DAN

1. LOW EARN LENG (NO. K/P: 640513-10-7109)
2. PENDAFTAR HAK MILIK
3. PEMUNGUT DUTI SETEM
4. LEMBAGA HASIL DALAM NEGERI MALAYSIA ...RESPONDEN-RESPONDEN

GROUNDS OF JUDGMENT

Introduction

1. By way of an Originating Summons filed on 15.10.2019, the Applicant seeks the following principal reliefs:-

   (a) a declaration that the Sale and Purchase Agreement dated 6.3.2019 between the Applicant and the 1st Respondent has been terminated;

   (b) a declaration that the 2nd Respondent do cancel the registration vide Presentation No. 37805/2015 dated 16.4.2015 in respect of the transfer of a two and half (2 ½) storey shop lot with an address at No. 1, Jalan 8/1E, 46050 Petaling Jaya, Selangor held under qualified title HS(D) 163769, Lot 1 Seksyen 8 Bandar Petaling Jaya Daerah Petaling Negeri Selangor and re-register the said property in the name of the Applicant as the registered proprietor;

(c) a declaration that the 3rd Respondent and/or 4th Respondent refund Ad Valorem Duty of RM 60,600 to the Applicant and cancel the Stamp Certificate issued by the 4th Respondent on 27.3.2015;

(d) a declaration that the 3rd Respondent and/or 4th Respondent refund Real Property Gains Tax of RM 86,411.54 to the Applicant; and

(e) a declaration that the 3rd Respondent and/or 4th Respondent cancel all information and record pertaining to the said property stated in Form CKHT 1A, 2A and 3.

The salient facts

2. The facts in the main, are not in dispute. On 6.3.2015, the Applicant and the 1st Respondent entered into an agreement ("**the SPA**") wherein the Applicant agreed to sell and the 1st Respondent agreed to buy a property described as a two and half (2 ½) storey shop lot with an address at No. 1, Jalan 8/1E, 46050 Petaling Jaya, Selangor held under qualified title HS(D) 163769, Lot 1 Seksyen 8 Bandar Petaling Jaya Daerah Petaling Negeri Selangor ("**the said property**"). The price agreed upon was RM 1,500,000.00.

3. The 1st Respondent paid a deposit of RM 150,000. The term of the SPA stipulated that the balance purchase price of the said property was to be paid within ninety (90) days from the date of the SPA.

4. However, four days after executing the SPA, on 10.3.2015, the 1st Respondent wrote to the Applicant to inform that she was unable to pay the balance purchase price due on 5.6.2015. She requested an extension of one year to pay the sum due from the date of the registration as the registered proprietor of the said property. In the event the balance purchase price remained due after the one year extension, the Applicant would be entitled to terminate the SPA, forfeit the deposit and reverse the transfer transaction. The Applicant agreed to her request.

5. Parties then executed the requisite Form 14A on 11.3.2015 notwithstanding the fact that the balance purchase price had not been paid. On 25.3.2015, the 3rd Respondent issued a notice of assessment that ad valorem duty of RM 60,600.00 was payable in respect of Form 14A.

6. The ad valorem duty as assessed was paid and a Stamp Certificate was issued by the 3rd Respondent certifying that stamp duty of RM 60,600.00 in respect of Form 14A had been paid on 27.3.2015.

7. Following the payment of the ad valorem duty, Form 14A together with the other documents required to effect transfer was presented at the office of the 2nd Respondent on 16.4.2015 vide Presentation No. 37805/2015. The transfer was effected by the 2nd Respondent wherein the 1st Respondent became the registered proprietor of the said property.

8. One year after the date of registration of transfer, the 1st Respondent had yet to pay the balance purchase price. On 17.4.2016, the Applicant through its solicitors wrote to the 1st Respondent to terminate the SPA with immediate effect. The 1st Respondent was also informed inter alia, that the deposit of RM 150,000 paid would be forfeited, and was asked to return the original document of title for the purposes of cancelling the registration of the said property in her name. The 1st Respondent responded by letter dated 29.4.2016 to say she had no objections provided that the stamp duty paid of RM 60,600 paid to the 4th Respondent be refunded to her.

9. Through its solicitors' letter dated 6.5.2016, the Applicant requested from the 4th Respondent a refund of the stamp duty as the agreement for the sale of the property had been terminated. On the same day, the Plaintiff's solicitors also requested the 2nd Respondent to re-transfer the said property to the Plaintiff.

10. With regard to real property gains tax in respect of the said property, the Applicant filed Forms CKHT 1A, CKHT 2A and CKHT 3 for the year of assessment 2015. On 15.12.2016, the Applicant paid real property gain tax of RM 86,411.54 to the 4th Respondent. The reliefs in the Originating Summons filed inter alia, included a refund of this amount.

11. However, when this matter came up for hearing, parties informed the court that the real property gains tax had already been refunded by the 4th Defendant. That being the case, both parties agree that the relief for a refund of the tax paid was already academic and no

longer a live issue before this court. What remains to be determined in respect of 3rd and 4th Respondents is the refund of the stamp duty paid.

Issues for the court's determination

12. The central issues arising from the factual scenario can be stated as:-

(i) whether the 2nd Respondent can be ordered to reverse the registration presented vide Presentation no. 37805/2015 by cancelling the registration of the 1st Respondent as the registered proprietor, and re-registering the said property in the name of the Applicant; and

(ii) whether the 3rd and 4th Respondents can be ordered to refund the ad valorem duty of RM 60,600.00 to the Plaintiff.

Decision of this court

Cancellation of registration of 1st Respondent and re-registration of Applicant as the registered proprietor

13. The Applicant seeks a declaration that the SPA entered into by the parties on 6.3.2015 has been terminated. The 1st Respondent is not represented and has not filed any documents to contest the proceedings. Counsel for Applicant submitted that the position of the 1st Respondent is clearly expressed from her letters "**LSH-3**"

and "**LSH-5**" exhibited to the Affidavits filed in support of the Applicant's case.

14. "**LSH-3**" is the 1st Respondent's letter to the Applicant to inform that she was unable to pay the balance purchase price by the due date of 5.6.2015, and requested for an extension of time. By the last day of the extended period, she was still unable to pay which led to the exchange of correspondence between the Applicant and the 1st Respondent exhibited as "**LSH-5**". On 17.4.2016, the Applicant's solicitors Messrs. Lee & Lim wrote as follows:-

Notice of termination of the Sale and Purchase Agreement dated 6.3.2015

Property	:	**all that unit of a two and half (2 ½) storey shop bearing a postal address known as No.1, Jalan 8/1E, 46050 Petaling Jaya, Selangor held under HSD 163769 Lot 1 Seksyen 8 Tempat Lot 1 Road 8/1E, Section 8, Bandar Petaling Jaya District of Petaling State of Selangor**
Vendor	:	**LOW SEE HEE & SONS REALTY SDN BHD**
Purchaser	:	**LOW EARN LING**

We act for the abovenamed Vendor and refer you to the above and your letter to our client dated 13.3.2015.

2. We are informed by our client that you are unable to settle the full and final balance of the purchase price amounting to RM 1,350,000.00 within the agreed extended period of one year from the date of the registration of transfer in your favour on 16.4.2015.

3. We are now instructed by our client to demand, which we hereby do as follows:

3.1 that the above sale and purchase agreement is terminated with immediate effect and as such you and/or your agent are no longer allowed to enter the property;

....

The 1st Respondent's reply in her letter dated 29.4.2016 stated as follows:-

Notice of termination of the Sale and Purchase Agreement dated 6.3.2015
Vendor : LOW SEE HEE & SONS REALTY SDN BHD
Purchaser : LOW EARN LING

I/We refer the the above matter and my/our letter dated 10th March 2015 and your letter dated 17th April 2016.

I/We hereby have no objection of the contents stated in your aforesaid letter provided that the full stamp duty in the sum of RM 60,600 paid to the Inland Revenue is refunded to me/us.

.....

15. The import of paragraph 3.1 of the Applicant's letter is clear. The Applicant notified the 1st Respondent that the SPA had been terminated. The Applicant was merely exercising its contractual right pursuant to what the parties had agreed to. It is unnecessary to seek a declaration from this court that the SPA had terminated.

16. The letter by the Applicant's solicitors dated 6.5.2016 to the 2nd Defendant seeking to reverse the registration, also cited the reason that the SPA had been terminated.

17. The Applicant is therefore misconceived in seeking a declaration from this court that the SPA has been terminated as it has already been effectively terminated by the Applicant. Rather it is the consequence of the termination that is the nub of the Applicant's claim. Following the termination, the Applicant now seeks an order from this court to cancel the registration of the 1st Respondent on the title and to re-register the Applicant as the proprietor.

18. The Applicant invokes the provisions of section 417 of the National Land Code 1965 as the basis for the order sought. For ease of reference, the section is set out herewith,

> **417. General authority of the Court**
>
> (1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.
>
> (2) Where, pursuant to any order made by virtue of this section, the Registrar or any Land Administrator-
>
> (a) cancels any instrument relating to land, or any memorial or other entry on any such instrument, or
> (b) makes any other amendment of, or addition, to, any such instrument, he shall note thereon the reason for the cancellation, amendment or addition, and the date thereof, and shall authenticate the same by his signature and seal.
>
> (3) Where the Registrar or Land Administrator takes action under this section in respect of any land or any share or interest therein, he shall

cause notice of his action to be served upon any person or body having a claim protected by caveat affecting the land, share or interest.

19. The Applicant's reliance on this provision is misconceived. Subsection 417(1) presupposes there is in existence proceedings in relation to land to be adjudicated by the court first. It is only upon a determination of the dispute that the Registrar is then directed by the court to take the necessary action to give effect to the decision.

20. The provision clearly expresses there must be a judgment or order to be made by this court. The declaration sought by the Applicant to the effect that the SPA has been terminated, does not fall within the ambit of this provision. There was no proceeding within the meaning of this sub-section, which resulted in a judgment or order. Consequently, there is nothing for the Registrar of Titles, the 2nd Defendant, to give effect to.

21. The scope and operation of section 417 was enunciated in **Tan Soo Bing & Ors v Tan Kooi Fook [1996] 3 MLJ 547** where the Federal Court held,

> In our view, the words '... be necessary to give effect to any judgment or order given or made in any proceedings' in s 417(1) are very important. These words limit the power of the court to give directions to the registrar. The court can only give directions to the registrar if such directions are necessary to give effect to any judgment or order of the court. There must first be a final judgment or order of the court. Then only, in order to give effect to such judgment or order, the court can give directions to the registrar.

22. This principle was affirmed in the **Malaysia Building Society Bhd v KCSB Konsortium Sdn Bhd [2017] 2 MLJ 557**, where the Federal Court referred to **Tan Soo Bing & Ors** (supra) and reiterated that that there must first exist a final judgment or order of the court for the court to act under s 417. (See also: **Taipan Focus Sdn Bhd v Tunku Mudzaffar v Tunku Mustapha [2011] 1 MLJ 441**, **Takako Sakao v Ng Pek Kuan & Anor (No. 2) [2010] 1 CLJ 419, Woon Kim Poh v Sa' amah Bt Hj Kasim [1987] 1 MLJ 400**).

23. Thus, section 417 cannot be invoked by the Applicant to direct the Registrar to reverse the registration by merely seeking a declaration from this court that the SPA has been terminated. The declaration is not required in the first place, and hence there is no judgment or order within the meaning of section 417. In the result, the relief sought against the 2nd Respondent fails.

Refund of the ad valorem duty of RM 60,600.00

24. Before embarking on a discussion of the merits of the claim for refund of stamp duty paid, a preliminary issue needs to be settled first. In the exchange of affidavits between the parties, the 3rd and 4th Respondents had initially raised the issue of the proper party to apply for the refund. The 3rd and 4th Respondents questioned the locus of the Applicant to apply, and contend that the Applicant ought to have been the 1st Respondent instead.

25. In response to the locus point raised, the Applicant tendered exhibit "**LSH-8**" in which the 1st Respondent admitted that the real property gains tax and the ad valorem stamp duty were paid for by the

Applicant and that she had assigned her rights to the Plaintiff to claim for refund.

26. In the absence of any affidavit in reply by the 1st Respondent to contest the right of the Applicant to claim for the stamp duty refund, I accept the averment on oath that the 1st Respondent had assigned her rights to the Plaintiff to seek a refund. In any event, during the hearing before me, this point was not strenuously pursued.

27. The Applicant contends that section 57 of the Stamp Act 1949 allows for a refund where the agreement has not been fully performed. As the SPA has been terminated, the Applicant is entitled to seek a refund of the stamp duty paid.

28. The 3rd and 4th Respondent disputes the right of the Plaintiff to claim and argues that the Applicant has failed to bring itself within the circumstances in which a refund can be made under the provision relied on.

29. To appreciate the rival arguments and contention advanced on behalf of the respective parties, the provisions of section 57 of the Stamp Act 1949 [Act 378] is set out as follows,

> **Allowance for spoiled stamps**
>
> 57. Subject to any rules which may be made under this Act and to the production of such evidence by statutory declaration or otherwise as the Collector may require, allowance shall be made by the Collector for stamps spoiled in the following cases:

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before the paper bears the signature of any person or any instrument written thereon is executed by any party;

(b) any adhesive stamp which has been inadvertently and undesignedly spoiled or rendered unfit for use and has not in the opinion of the Collector been affixed to any paper;

(c) (Deleted by Act 661);

(d) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;

(e) the stamp on any promissory note which from any omission or error has been spoiled or rendered useless, although the same, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped promissory note, is produced identical in every particular except in correction of the error or omission, with the spoiled note;

(f) the stamp used for any of the following instruments:

(i) an instrument executed by any party thereto, but afterwards found to be absolutely void from the beginning;

(ii) an instrument executed by any party thereto, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(iii) an instrument executed by any party thereto, which has not been made use of for any purpose whatever, and which by reason of the inability or refusal of some necessary

party to sign the same or to complete the transaction according to the instrument is incomplete and insufficient for the purpose for which it was intended;

(iv) an instrument executed by any party thereto, which by reason of the inability or refusal of any person to act under the same, or for want of registration within the time required by law, fails of the intended purpose or becomes void;

(v) an instrument executed by any party thereto, which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped, or which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped;

(vi) in the case of an instrument executed by any party implementing a sale under a duly stamped agreement for sale and purchase but afterwards became cancelled, annulled, rescinded or is otherwise not performed:

Provided as follows:

.....

30. Section 57 lists six instances in paragraphs (a) to (f) in which allowance can be made for spoiled stamps. The relief of a refund however, is subject to the circumstances stipulated therein. Parties agree that in the context of the present case, only paragraph (f) of section 57 needs to be considered as it deals with executed instruments. The executed instrument paid here is the Form 14A.

31. Paragraph (f) in turn, lists six instruments in which the stamps used can be considered to be spoilt. The Applicant submits that its case falls within the ambit of sub-paragraphs (iv) and (vi). The 3rd and 4th Respondents on the other hand, argue otherwise.

32. The operative words of sub-paragraph (iv) which the Applicant relies on is "*by reason of the inability…to act under the same, fails of the intended purpose or becomes void.*" The Applicant submits that pursuant to section 26 of the Contracts Act 1950, the SPA is now void as the 1st Respondent has failed to fulfil the terms of the SPA by failing to pay the balance purchase price. Consequently, the instrument used, which is the Form 14A, has also become void.

33. The contention of the Applicant is wholly without merit. Section 26 of the Contracts Act provides that an agreement is void for failure of consideration. There is no failure of consideration here as the consideration provided for in the SPA is the sum of RM 1,500,000.00. Failure to pay part of the consideration is not to be equated to failure of consideration. The SPA is therefore not rendered void by such failure to pay the balance purchase price.

34. Reliance is also placed by the Applicant on **Galaxy Energy Technologies Sdn Bhd v Timbalan Pemungut Duti Setem, Malaysia & Anor [2011] 5 CLJ 829** which it claims is on all fours with its case. There, the purchaser was unable to pay the balance purchase price after Form 14A had been executed and stamp duty paid. The Court of Appeal held that the inability referred to in sub-paragraph (iv) can include inability to complete the sale transaction due to its proven inability to obtain financing. As a consequence of

such inability, the intended purpose of the Form 14A, which is to transfer or vest the property in the purchaser had failed.

35. The facts here, can be distinguished from **Galaxy Energy** (supra) as the said property has been vested in the 1st Respondent. Her name appears on the title as the registered owner. The Form 14A instrument has achieved its purpose. There is no failure of intended purpose within the meaning of sub-paragraph (iv), even if there was an inability to obtain financing. I am therefore of the view that sub-paragraph (iv) does not aid the Applicant.

36. The Applicant also relies on sub-paragraph (vi) to submit that the Form 14A was for the purpose of "*implementing a sale under a duly stamped agreement for sale and purchase*" but "*afterwards became cancelled, annulled, rescinded or is otherwise not performed*" due to Applicant's termination of the SPA. I agree with the submission of the Applicant.

37. However, the matter does not end here. To be entitled to the relief of spoiled stamps, the conditions in the proviso must be satisfied. There are three paragraphs in the proviso to section 57 as set out here below:-

> Provided as follows:
>
> (a) that the application for relief is made within twelve months after the stamp has been spoiled or become useless or in the case of an executed instrument after the date of the instrument, or, if it is not dated, within twelve months after the execution thereof by the person whom it was first or alone executed or within such

further time as the Collector may prescribe in the case of any instrument sent abroad for execution or when from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period;

(aa) that the application for relief is made within two months from the date the instrument of transfer is rejected by the Registrar of Titles; or

(b) that in the case of an executed instrument no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence, and that the instrument is given up to be cancelled.

38. The 3rd and 4th Respondents submit that the Applicant has not fulfilled the mandatory condition in proviso (a) as the application for relief was not made within twelve months after the date of the instrument. Form 14A was dated 11.3.2015. The application was made on 6.5.2016, and received by the 3rd Respondent on 1.12.2016, well after the twelve months period. The Applicant was also well aware that its application was out of time as evident from the contents of "**LSH-6**" when its solicitors wrote to the 4th Respondent stating, "*Oleh yang demikian pihak kami bagi pihak anakguam memohon dari pihak tuan supaya mengembalikan Duti Setem tersebut kepada anakguam akibat dari penamatan dan pembatalan transaksi perjanjian jual beli dan pindahmilik hartanah tersebut walaupun tempoh permohonan bayaran balik telah melebehi 12 bulan selepas tarikh suratcara pindahmilik disempurnakan.*"

39. The Applicant in response says that it is not relying on proviso (a) but proviso (b); which condition has been satisfied, as no legal proceedings have been commenced where the Form 14A could or would be offered in evidence and it is now given up to be cancelled. The 3rd and 4th Respondents however contend that paragraph (b) does not stand alone, and is to be fulfilled in addition to (a).

40. The issue arising out of the parties' contention is whether provisos (a), (aa) and (b) are to be read disjunctively, or otherwise.

41. Proviso (aa) was inserted in 2009 vide amending Act 693, and came into force on 1.1.2009. Prior to the amendment, only provisos (a) and (b) existed. Learned counsel for the 3rd and 4th Respondents submitted that notwithstanding the word "or" which appears after proviso (aa), provisos (a) and (b) are to be read conjunctively. Such a construction would give effect to the true intention of the Act and would avoid a patent absurdity. I find the submission to have much merit in it.

42. Prior to the amendment, provisos (a) and (b) were separated by a semi-colon. For a sensible construction to be arrived, the semi-colon must mean that the proviso (a) and (b) are to be read conjunctively.

43. My reason for so saying is this. Proviso (a) provides for a time period in which the application for relief is to be made. In the case of stamps spoiled in instances stated in section 57 (a) to (e), the application must be made within 12 months from the date the stamp became spoiled or useless. In the case of an executed

instrument referred to in section 57 (f), the period of 12 months is calculated from the date of the instrument. On the other hand, proviso (b) does not stipulate a time frame. It requires that in the case of an executed instrument, no legal proceeding has been commenced and the instrument is given up to be cancelled. To my mind, it would be incongruous for proviso (b) to be read independently without being subject to any time frame to apply for relief.

44. With the addition/insertion of (aa), the time frame for applying for relief is also stipulated. The application must be made within 2 months from the date the instrument of transfer is rejected by the Registrar of Titles. This fortifies the argument that proviso (b) cannot be read distinct and separate as both the preceding provisos (a) and (aa), provide for time frame for application as clearly expressed by the opening words "the application for relief...". To read proviso (b) as disjunctively would to my mind, be at variance with the intention of the legislature and lead to absurdity and repugnance. Proviso (b) is to be read conjunctively with (a), and also conjunctively with (aa). Such a reading would reconcile all the provisos and give a logical and comprehensive meaning to section 57 as a whole.

45. **NS Bindra's Interpretation of Statutes** provides guidance for this approach to construction, at page 277,

> When there is a doubt or a patent absurdity and the grammatical construction fails to give effect to the plain intention of the Act, then the

courts are competent to and should rewrite the section in such a way as to give effect to the Act.

Whilst the word "or" is normally disjunctive and the word "and" is normally conjunctive but there may be occasions where they are read vice versa to give effect to the manifest intentions of the legislature, as disclosed from the context. If a literal reading of the word "or" produces an absurd result, then "and" may be read for "or" and "or" may be read for "an."

46. Therefore when proviso (aa) was inserted with the inclusion of the word 'or', it cannot result in provisos (a) and (b) being read as disjunctive. Provisos (a) and (b) existed prior to proviso (aa), and its construction cannot be affected by the insertion of proviso (aa) and the conjunction 'or'.

47. In **Malaysian Vermicelli Manufacturers (Melaka) Sdn Bhd v Pendakwa Raya [2001] 1 MLJU 359,** Ahmad Maarop JC (as he then was) had to interpret the provisions of paragraph 4 in the First Schedule of the Environment Quality (Sewerage and Industrial Effluents) Regulations 1979, where all the sub-paragraphs ended with a semi-colon. He held that the paragraphs were to be read conjunctively as to do otherwise would lead to unsatisfactory and absurd consequences.

48. Taxing statutes are governed by the principle that any ambiguity is to be resolved in favour of the taxpayer. However it does not apply where the provision to be construed is one that provides relief. In the English Court of Appeal case of **Littman v Barron [1951] 2 All ER 393**, Cohen LJ held:

> The principle that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability. (See also: **Ketua Pengarah Hasil Dalam Negeri v Kualiti Alam Sdn Bhd [2017] MLJU 313)**

49. A similar pronouncement was also made by Harman J in **Holmleigh (Holdings) Ltd v Commissioners of Inland Revenue (1967-71) 46 REPORTS OF TAX CASES 435** where he said,

> The burden of bringing the several transactions which affect them within the relevant dispensing sections is of course on the Appellants. This is not a case of a taxing Act where the Crown must justify its charges: the boot is in the other foot.

50. Ultimately, the primary consideration is the object and purpose of the Act that the proviso is designed to achieve, and to avoid an interpretation that goes contrary to such purpose.

51. Even the Malaysian courts have adopted the purposive approach in interpreting taxing statutes as expressed in the Federal Court decision of **Lembaga Pembangunan Industri Pembinaan Malaysia v Konsortium JGC Corporation & Ors, [2015] 9 CLJ 273** where Suriyadi FCJ observed that:

> The general principles in *Mangin v Inland Revenue Commissioner* of interpreting a tax imposing statute are still woven into the fabric of the principles of construction of taxing provisions despite the introduction of s. 17A of the Interpretation Acts 1948 and 1967. Section 17A of the latter Act enjoins a purposive reading to be undertaken when interpreting a statute; with such statutory backing, a literal and blinkered approach

must now compete with the context and purpose of the Act as legislated by Parliament. With a litany of cases in abundance, it is now well established that taxing statutes like all other statutes must be given a purposive interpretation to fulfil the objective of the statute, unless the circumstances demand otherwise.

(See also: **Palm Oil Research and Development Board Malaysia v Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ**).

52. The Applicant therefore fail to satisfy the mandatory requirements in proviso (a) as the application for relief was made more than twelve months after the date in Form 14A. It cannot avail itself of section 57 and the allowance for spoiled stamps to be entitled to a refund of the stamp duty paid.

Conclusion

53. For the foregoing reasons, the reliefs sought in the Originating Summons are dismissed. I order costs of RM 3,000 to be paid to the 3rd and 4th Respondents and RM 1500 to the 2nd Respondent.

Dated: 1st day of February 2020

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Alice Loke Yee Ching
Judicial Commissioner
High Court of Malaya
Shah Alam

Counsel for Applicant	: Mr. Lim Kien Huat Tetuan Lee & Lim
Counsel for 2nd Respondent	: Puan Mazatul Munirah bt Abdul Rahman, Penolong Penasihat Undang-Undang Negeri Selangor
Counsel for 3rd and 4th Respondents	: Puan Normareza bt Mat Rejab Peguam Kanan Hasil Puan Syazana Safiah Rozman Peguam Hasil