

Deed of Assignment Between Purchaser and End-Financier Is Still an Absolute Assignment under s.4(3) of the Civil Law Act

Federal Court Overturns Court of Appeal Decision in LIM MEOW KHEAN & ORS v. PAKATAN MAWAR (M) SDN BHD & ORS [2021] MLJU 127

The Federal Court on 9.3.2022 had decided unanimously to set aside the decision of the Court of Appeal in the case of **LIM MEOW KHEAN & ORS v. PAKATAN MAWAR (M) SDN BHD & ORS [2021] MLJU 127**.

The Court of Appeal decision had quite extensive repercussions to the established legal position relating to the relationship between a purchaser and the end-financier under a deed of assignment, powers of liquidators as well as the rights of a master chargee granting a bridging financing in a property development.

The original action was commenced by a group of purchasers against a wound-up developer, the master chargee and end-financiers. SDC acted for the master chargee that granted bridging financing to the developer to finance the development of some 316 factory units. The purchasers were individual purchasers of the units and they entered into Sale and Purchase Agreements (“SPA”) with the developer at various dates in 1996 and 1997 and most had financed the purchase via various end-financiers. Full purchase price had yet to be released when the project was abandoned in 1998 but there were a number of disclaimer letters that were issued by the master chargee to the end-financiers. The developer was wound up in 2002 and the current liquidators had, with the consent of the master chargee, sold the project land to a 3rd party in 2015. The proceeds of the sale were sufficient to only redeem the master charge at a substantial discount. There was no surplus to be distributed.

The Court of Appeal inter alia found:

- a. That the purchasers have legal standing to sue the developer and the master chargee on the basis that the standard deed of assignment between the purchaser and the end-financier was not an absolute assignment under s.4(3) of the Civil Law Act.
- b. That a disclaimer letter with an undertaking to refund specified and limited redemption sums between the master chargee and the end-financiers resulted in an agency relationship between the end-financier and the purchasers. The purchasers therefore had standing to sue the developer and master chargee as principals under s.179 of the Contracts Act.
- c. That purchasers who had not paid the full purchase price for the unit purchased were considered a beneficial owner of the unit in the project land. This is because the developer and the master chargee held a constructive trust over the project land. The constructive trust was based on:
 - i. The purchaser being “able, willing and ready” to pay the full purchase price upon completion of the project; and
 - ii. The fact that the master chargee had given undertakings to the purchaser’s end financier to deliver the individual subdivided titles to the end financier upon payment of the redemption sum.
- d. That the master chargee had unjustly enriched itself by consenting to the sale of the project land to a 3rd party through the liquidators. The proceeds of the sale were used to settle the indebtedness of the developer to the master chargee without giving due credit to the purchasers; and
- e. That the purchasers’ having been granted the right to sue effectively on their SPAs were not bound by the limitation period as their cause of action only accrues from the sale of the project land to a 3rd party notwithstanding the fact did not take any steps to terminate or enforce the SPAs.

SDC obtained leave to appeal in 2021 and the appeal at the Federal Court was heard by a quorum of 3 consisting of the Chief Justice, Tun Tengku Maimun bt Tuan Mat, Dato Zabariah Yusof FCJ and Dato Rhodazariah Bujang FCJ. The Federal Court unanimously allowed the appeal. The decision of the Court of Appeal was set aside.

For further information, you can contact the team at [SDC](#).

Other news



SDC is proud to announce that Khor Wan Yin is now a partner of the firm with effect from 1st March 2022.

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