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ADVOCATES & SOLICITORS

Empower

WHAT'S INSIDE THIS ISSUE:

A MONTHLY NEWSLETTER BY
HHQ & HLP

Note from the Editorial Team

Happy Chinese New Year!

Dear Readers,

As we enter into the 15th day of the Lunar New Year celebrations today, we mark the end of the festivities with the traditional celebration of Chap Goh Mei. 2021, is the year of the Ox, an animal that symbolizes strength and determination. Whilst the present times are undeniably tough and ladened with uncertainty, we at HHQ and HLP are determined to serve you better through our newsletter, Empower. With Empower, we aim to equip you with legal knowledge and to keep you abreast of all the latest developments in the field of law, particularly on areas that are close to our practice.

In this month's newsletter, we have 4 articles. In our first article, we will consider a recent High Court decision which dealt with the issue of whether a responding party has the right to file a rejoinder in an adjudication proceeding. In the second article we have provided a concise and easy to understand summary of the recent amendments made to the Industrial Relations Act. The next article considers in depth a recent decision of the Federal Court which in essence has effectually limited the jurisdiction of the Tribunal for Home Buyers Claims. Finally, our last article, explains another recent decision of the Federal Court in which the court had to consider the threshold for winding up a company based on allegations of illegality.

We hope that you enjoy reading this month's edition and we have been indeed humbled by the feedback and notes of encouragement received from all of you readers. We will continue to synergize our efforts to provide you with our updates and until the next issue, happy reading!

EDITORIAL TEAM


Chong Lee Hui


Ankit Sanghvi


Serene Hiew Mun Yi


Amy Hiew Kar Yi


Tan Poh Yee


Hee Sue Ann


Chan Jia Ying

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Contact Us

HALIM HONG & QUEK
ADVOCATES & SOLICITORS

KUALA LUMPUR OFFICE
OFFICE SUITE 19-21-1, LEVEL 21
WISMA UOA CENTRE
19, JALAN PINANG
50450 KUALA LUMPUR
T: +603 2710 3818
F: +603 2710 3820 (Corporate & Real Estate)
+603 2710 3821 (Dispute Resolution)
E: hhqkl@hhq.com.my

PENANG OFFICE
C-11-2, LORONG BAYAN
INDAH 3, BAY AVENUE
11900 BAYAN LEPAS
PULAU PINANG
T: +604 640 6818
T: +604 640 6817
F: +604 640 6819
E: hhqpenang@hhq.com.my

JOHOR OFFICE
A-2-23 & A-3-23, BLOCK A
PUSAT KOMERSIAL BAYU TASIK
PERSIARAN SOUTHKEY 1
80150 JOHOR BAHRU, JOHOR
T: +607 300 8101
T: +607 289 7366
F: +607 300 8100
E: hhq@hhqjb.com.my

HAROLD & LAM PARTNERSHIP
ADVOCATES AND SOLICITORS

KUALA LUMPUR OFFICE
SUITE 32-5, 32ND FLOOR
OVAL TOWER DAMANSARA
NO. 685, JALAN DAMANSARA
60000 KUALA LUMPUR
T: +603 7732 8862
F: +603 7732 8812
E: hlp@hlplawyers.com

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THE RESPONDENT'S RIGHT TO FILE A REJOINDER IN AN ADJUDICATION PROCEEDING

WRITTEN BY LYNN FOO

INTRODUCTION

In the High Court case of ***MRCB Builders Sdn Bhd v Wazam Ventures Sdn Bhd [2020] MLJU 208***, the High Court recently held that Construction Industry Payment and Adjudication Act 2012 ("**CIPAA 2012**") does not provide a right for a respondent in an adjudication proceeding to file a rejoinder, further response or further reply to an Adjudication Reply ("**Rejoinder**") and therefore, the dismissal of the respondent's request for Rejoinder by an adjudicator in an adjudication proceeding does not amount to a breach of natural justice.

DOES CIPAA 2012 PROVIDES FOR A REJOINDER?

In the case of Wazam, the respondent, MRCB Builders Sdn Bhd ("**MRCB**") alleged that CIPAA 2012 provides a right for the respondent in an adjudication proceeding to file a Rejoinder. It is also MRCB's contention that the adjudicator has breached the rule of natural justice under **Sections 15 (b)** and **24 (c) of CIPAA 2012** when the adjudicator has dismissed MRCB's request for Rejoinder.

In this regard, MRCB claimed that the Adjudication Reply filed by Wazam was supported by documents which were not adduced when Wazam served its payment Claim under **Section 5 of CIPAA 2012** and its Adjudication Claim. MRCB has then requested for leave to file a Rejoinder to the Adjudication Reply. However, the Adjudicator has dismissed MRCB's Request for Rejoinder on the ground that CIPAA 2012 does not provide a right for the respondent to reply to the Adjudication Reply.

Wong Kian Kheong J in Wazam's case held that CIPAA does not provide a right for a respondent in an adjudication to file a Rejoinder simply because:-

a) the parties in an adjudication proceeding have been given the right to present their case via Adjudication Claim (**Section 9 of CIPAA 2012**), Adjudication Response (**Section 10 of CIPAA 2012**) and Adjudication Reply (**Section 11 of CIPAA 2012**) pursuant to CIPAA 2012;

b) the Parliament has specified certain time periods for an adjudicator to deliver an adjudication decision as stipulated in **Sections 12(2)(a) to (c) of CIPAA 2012**;

c) the wording of **Section 12(2)(a) of CIPAA 2012** implies that a Rejoinder cannot be filed after the filing of an Adjudication Reply;

d) the filing of Rejoinder may cause the failure of an adjudicator to deliver an adjudication decision within the time period stipulated in **Section 12(2)(a) of CIPAA 2012** (unless the parties agree to an extension of time for the adjudicator to deliver the adjudication decision under **Section 12(2)(c) of CIPAA 2012)**. Any non-compliance of **Section 12(2)(a) of CIPAA 2012** will render the adjudication decision void;

e) the construction of Sections 9(1), 10(1), 11(1), 2(1), 2(a) and 3 of CIPAA is consistent with the purpose of CIPAA 2012 i.e., to ensure that the contractors and sub-contractors are not deprived of cash flow (**See the Long Title of CIPAA and the Federal Court case of Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal [2019] 5 AMR 516**);

f) an adjudicator has wide discretionary power under Sections **12(1), 25(a), 25(i) and 25(j) of CIPAA 2012**; and

g) even if a respondent in an adjudication suffers any prejudice solely because the respondent is not allowed to file a Rejoinder, all adjudication decision is temporary binding in nature. The prejudice may be remedied in a subsequent arbitration or litigation regarding the dispute in question. (**See Econpile (M) Sdn Bhd v IRDK Ventures Sdn Bhd & Anor [2016] 5 CLJ 882**)

REFUSING A REQUEST FOR REJOINDER – A DENIAL OF NATURAL JUSTICE?

In view of the reasons explained above, the High Court in Wazam is of the view that the Adjudicator did not commit any error in law when MRCB's request for Rejoinder was dismissed by the adjudicator. The Court added that the Adjudicator had not deprived MRCB of its right to adduce evidence and to submit on any issue which arose in the adjudication proceedings and that the Adjudicator had considered all the defences advanced by MRCB accordingly.

Furthermore, the Court has also decided that, when an adjudicator complies with **Section 12(2)(a) of CIPAA 2012** and exercises his or her discretion under **Sections 25(a) and (j) of CIPAA 2012** in refusing an application by a respondent to file a Rejoinder, this does not itself amounts to a breach of natural justice within the meaning of **Sections 15(b) and 24(c) of CIPAA 2012**.

OTHER HIGH COURT CASES

In dealing with the issue of whether an adjudicator has breached the rule of natural justice in refusing a request for a further reply, Wong Kian Kheong J in **Ireka Engineering & Construction Sdn Bhd v Tri Pacific Engineering Sdn Bhd and another summons [2020] MLJU 548**, has also adopted his earlier grounds in Wazam as his basis.

CONCLUSION

Given the reasoning of the decision in the abovementioned case, it appears that, the adjudicator has the discretion to establish the procedures in conducting the adjudication proceedings including limiting the submission of documents by the parties or issue any direction as may be necessary pursuant to **Section 25 of CIPAA 2012**. As long as the adjudicator adhere to **Section 12(2)(a) of CIPAA 2012** and also, exercise his or her discretion to dismiss a request to file a Rejoinder, then this itself would not amount to a breach of natural justice.

It is also important to note that, the adjudication decision is interim and temporary in nature. Even if a respondent in an adjudication suffers any prejudice solely because the respondent is not allowed to file a Rejoinder, it can still refer the dispute(s) in question to be finally decided in an arbitration or litigation pursuant to **Section 13 of CIPAA 2012. (See Econpile (M) Sdn Bhd v IRDK Ventures Sdn Bhd & anor case [2016] 5 CLJ 882)**.

Lynn Foo
Partner
Harold & Lam Partnership
lynn.foo@hlplawyers.com

THE INDUSTRIAL RELATIONS (AMENDMENT) ACT 2020 A SUMMARY OF THE AMENDMENTS

WRITTEN BY ROHAN ARASOO JEYABALAH
ASSISTED BY TEOH YEN YEE & ESVINE MARIA SAGANATHAN

On 20 February 2020, the **Industrial Relations (Amendment) Act 2020 ("IRA 2020")** was gazetted. The majority of the provisions contained in the IRA 2020 came into effect on 1st January 2021 save for the provisions relating to bargaining rights and essential services which are not in force yet.

The amendments will see significant changes to the employment and industrial relations landscape in Malaysia. The key amendments which have come into force with effect from 1 January 2021 are set out below.

Representation on Unfair Dismissal

Previously, under the **Industrial Relations Act 1967 ("IRA 1967")**, an employee who considers himself to have been dismissed without just cause or excuse, may make a written representation to the Director General of the Industrial Relations Department to seek reinstatement. The Industrial Relations Department will then hold a conciliation meeting between the employee and the employer to determine whether the matter can be amicably resolved. If the matter cannot be amicably resolved, the Director General will then refer the representation to the Minister of Human Resources. The Minister then had the discretion to refer the representation to the Industrial Court for determination.

Pursuant to the IRA 2020, if the matter cannot be amicably resolved at the conciliation meeting, the Director General shall then refer the representation to the Industrial Court for determination. In essence, a representation would be automatically referred to the Industrial Court for determination unless the employer and employee are able to resolve the matter amicably at the conciliation meeting. This would essentially speed up the dispute resolution process which would benefit an employee who has been unfairly dismissed as the representation would be referred to the Industrial Court if no resolution is reached with the employer at the conciliation meeting.

An employer or employee may also now be represented by any person of their choice at the conciliation meeting except an advocate and solicitor so long as it is approved in writing by the Director General.

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Appeal to the High Court

Previously, under the 1967 Act, an aggrieved party could challenge an Industrial Court Award by filing an application for judicial review in the High Court. A party who is dissatisfied with the decision of the High Court in the judicial review application can pursue an appeal to the Court of Appeal with a final appeal being filed to the Federal Court subject to leave being obtained.

Now, pursuant to the IRA 2020, a party who is aggrieved by an Industrial Court Award, can file an appeal to the High Court within 14 days from the date of receipt of the said Award. The applicable procedures would be similar to that of an appeal to the High Court against the decision of the Sessions Court. This would essentially mean that the final recourse available to an aggrieved party is to the Court of Appeal. The right to bring the matter up to the Federal Court is therefore taken away. This is a significant development as there have been many landmark decisions made by the Federal Court on matters concerning employment and industrial relations.

This amendment will however not have retrospective effect. As such, cases filed before 1 January 2021 will not be affected and an aggrieved party may still challenge an Industrial Court Award by way of a judicial review application in the High Court.

Power to Continue Proceedings After Death

Prior to the IRA 2020, an unfair dismissal claim in the Industrial Court would abate upon the death of the Claimant as the claim was considered to be a personal action. However, following the coming into force of the IRA 2020, the Industrial Court is now empowered to continue hearing the unfair dismissal claim even after the death of the Claimant.

This amendment could however pose problems from a practical standpoint as the Claimant would be the main witness in any unfair dismissal claim and in the absence of the Claimant, the Industrial Court would be deprived of hearing the evidence of the Claimant either entirely or in part.

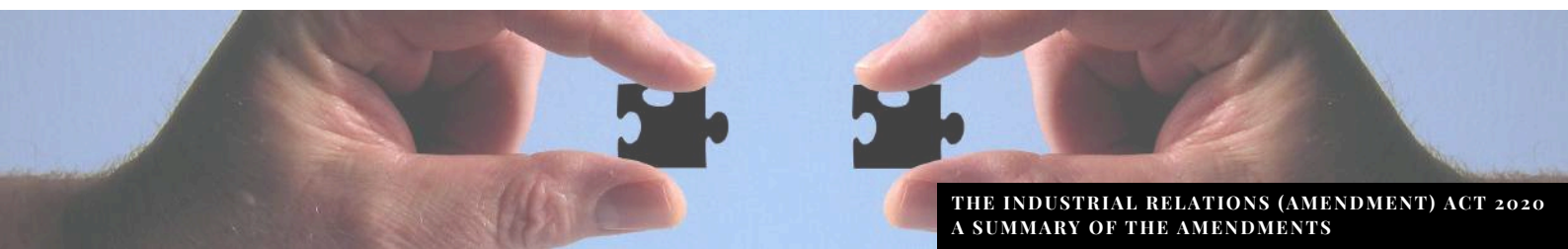
Compensation to the Next-of-Kin

The IRA 2020 also empowers the Industrial Court to award back wages or compensation in lieu of reinstatement or both to the next-of-kin of the Claimant who has passed away.

This is a significant development as the next-of-kin of a Claimant can stand to benefit from an Industrial Court Award in the event the Claimant passes away before the handing down of the said Award.

Appointment of Guardian Ad Litem

The IRA 1967 does not contain any provision for the appointment of a guardian *ad litem*. However, under the IRA 1967, the next-of-kin of a mentally disabled employee may apply to the High Court to appoint a guardian *ad litem* for the employee.



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Unfair Dismissal Claims by Employees of Statutory Bodies

Pursuant to the IRA 1967, employee of statutory bodies did not have the right to file a representation for unfair dismissal. However, with the coming into force of the IRA 2020, employees of statutory bodies have right to file such a representation in certain situations which is prescribed by the Minister of Human Resources.

Power to Impose Interest

Previously, under the IRA 1967, there was no provision entitling the Industrial Court to award interest. However, under the IRA 2020, power is conferred on the Industrial Court to impose interest of up to 8% per annum to an Award commencing from the 31st day of the said Award. This is also a significant development as a successful Claimant in the Industrial Court could now be awarded interest on the awarded sum and the interest could be up to 8% per annum which is higher than the interest rate prescribed by the Malaysian civil courts (5% per annum).

Increase of Penalty for Non-Compliance with Award

Previously, under the IRA 1967, a person who fails to comply with an Industrial Court Award could be liable to a fine not exceeding RM1,000.00. This penalty has now been increased to a fine not exceeding RM50,000.00 under the IRA 2020. Imprisonment has also been abolished under the IRA 2020.

Punishment for Illegal Picketing, Strikes and Lock-Outs

Previously, under the IRA 1967, a person could be liable to a fine not exceeding RM2,000.00 by reason of illegal picketing, strikes and lock-outs. This penalty has now been increased to a fine not exceeding RM5,000.00 under the IRA 2020.

No Question of Law to the High Court

The IRA 1967 empowered the Industrial Court to refer questions of law to the High Court. The IRA 2020 has however now abolished this power.

The Power of Trade Unions

The IRA 2020 empowers trade unions to raise questions of a general character relating to the transfer, recruitment, termination of services due to redundancy, dismissal, reinstatement and distribution of tasks.

Deputy President of the Industrial Court

The IRA 2020 has created a new position in the form of a Deputy President of the Industrial Court.

Qualifications of an Industrial Court Chairman

Previously, under the IRA 1967, an Industrial Court Chairman must have been a practicing lawyer of at least 7 years standing. This requirement has now been expanded to include a legally qualified person with at least 15 years' experience in labour and industrial relations in the Ministry of Human Resources.

Rohan Arasoo Jeyabalah
Partner
Harold & Lam Partnership
rohan@hlplawyers.com

Teoh Yen Yee
Senior Associate
Harold & Lam Partnership
yenyee@hlplawyers.com

Esvine Maria Saganathan
Associate
Harold & Lam Partnership
esvine@hlplawyers.com

FEDERAL COURT PUTS LIMIT ON THE JURISDICTION OF THE TRIBUNAL FOR HOMEBUYERS' CLAIM

WRITTEN BY ALYCIA CHUAH & MEYER THOR

COUNTRY GARDEN DANGA BAY SDN BHD v TRIBUNAL FOR HOMEBUYERS' CLAIM & ANOR

FEDERAL COURT CIVIL APPEAL NO. 01(f)-17-07/2020(J)

Coram: Zaleha Yusof FCJ, Zabariah Mohd. Yusof FCJ, Rhodzariah Bujang FCJ

Appeal heard and decision delivered on 10 February 2021

SALIENT BRIEF FACTS

The 2nd Respondent (Purchaser) entered into a Sale and Purchase Agreement ("SPA") dated 30.12.2013 under Schedule H of the Housing Development (Control and Licensing) Regulations with the Appellant (Developer) to purchase a unit with parcel no. Block 11-A-3402 ("the Unit"). Vacant possession was subsequently handed over to the 2nd Respondent on 1.11.2017 wherein he accepted vacant possession by signing on the inspection form and thereafter proceeded with renovation of the Unit.

The 2nd Respondent then filed a claim against the Appellant at the 1st Respondent (Tribunal for Homebuyers' Claim) on 2.1.2018 claiming that the 2nd Respondent was given the wrong unit due to the lack of a covered balcony and sought for damages of RM50,000.00. The 1st Respondent then delivered an Award in favour of the 2nd Respondent on 7.6.2018 and held that the Unit delivered to the 2nd Respondent was a wrong unit and awarded RM50,000.00.

The Appellant filed for judicial review at the High Court on 3.7.2018 (which was dismissed on 27.12.2018) and subsequently appealed to the Court of Appeal on 8.1.2019 which affirmed the decision of the High Court. The Appellant then filed this current appeal to the Federal Court on 8.1.2020.

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ISSUES

The current appeal to the Federal Court raises 4 questions of law, namely:

Questions 1 & 2 - Jurisdiction Issue

(1) Whether Section 16N(2) of the Housing Development (Control and Licensing) Act 1966 ("HDA 1966") precludes the Tribunal for Homebuyer Claims (hereafter called "the Tribunal") from exercising jurisdiction over a claim which is not based upon an express term of the Sale & Purchase Agreement ("the SPA") or its specifications but is a claim based on the homebuyer's expectations of the unit purchased corresponding in all respects with a display model at the developer's showroom?;

(2) Whether the power conferred on the Tribunal under Section 16Y(2)(e) of HDA 1966 to "vary or set aside" the contract confers a jurisdiction on the Tribunal to add specifications of its own to the unit purchased by the homebuyer to include a sheltered/covered balcony which is not provided for in the SPA and to award damages in lieu thereof, or whether the said jurisdiction is properly exercisable only to ensure that the terms of the contract are in compliance with Schedule H of the Act?;

Question 3 - Estoppel Issue

(3) Whether the homebuyer's claim that he has been allotted the wrong unit by the developer is maintainable after he has inspected and taken possession of and renovated the premises or whether by the law of estoppel and acquiescence, he is precluded from maintaining any such claim?; and

Question 4 - Natural Justice Issue

(4) Whether a breach of natural justice occurred when the housing developer's representative at the proceedings was allotted only 15 minutes to respond to the homebuyer's allegation, made without prior notice, that his SPA was unilaterally altered and the date changed?; in the circumstances whether the Tribunal proceedings had miscarried given that legal representation is disallowed under Section 16U(2) of HDA 1966, and the fact that the Tribunal had in the end adopted and acted upon the extraneous material to make its award?

Halim Hong & Quek holding a watching brief for
Real Estate & Housing Developers' Association Malaysia (REHDA)
From left to right: Alycia Chuah Yuin Ting, Thoo Yee Huan, Datin Chong Lee Hui

THE GIST OF SUBMISSION OF THE PARTIES

Question 1

The Appellant submitted that the Tribunal is a statutory body established under HDA 1966 to ensure compliance with the statutory terms of housing SPA stipulated in Schedule G or H of the Housing Regulations and granted with limited jurisdiction by virtue of Section 16N(2) of HDA 1966 to decide on complaints arising from the express terms of the statutory SPA. It is a condition precedent for a valid claim to be based on the SPA and not generally of a claim arising from the purchase transaction itself.

It was also argued that the Tribunal could not act as a court of law with unlimited jurisdiction to enforce all complaints of homebuyers like in the form of oral collateral contracts, representations or warranties which may have caused the entry into the statutory contract. As such, the Tribunal lacked jurisdiction to determine the 2nd Respondent's claim which is based on misrepresentation.

Question 2

In reference to the power of the Tribunal to vary or set aside the contract as provided under Section 16Y(2)(e) of HDA 1966, the Appellant cited the cases of **Ang Ming Lee[1]**, **Sentul Raya[2]** and **Veronica Lee[3]** which provided that the statutory SPA under Schedule G or H of the Housing Regulations is a special contract prescribed and regulated by statute, and contended that there is no legal basis to recognise representations or assurances which sit alongside the statutory SPA by citing the case of **Encony Development Sdn. Bhd.[4]**. Thus, it was argued that the power conferred to the Tribunal under Section 16Y(2)(e) of HDA 1966 is a power of rectification to comply with the statutory terms provided in the statutory SPA and the Tribunal does not have the power to rectify the SPA by the addition or exclusion of terms inconsistent with the statutory SPA.

The Respondent on the other hand contended that Section 16Y(2)(e) of HDA 1966 conferred power on the Tribunal to include the missing terms to give effect to the intentions of the parties.

[1] [2020] 1 CLJ 162
[2] [2008] 4 MLJ 852
[3] [2009] 6 CLJ 232
[4] [2016] 3 MLJ 400
[5] [1990] 1 Lloyd's Rep 391
[6] [1921] 2 KB 608
[7] [1990] 3 All ER 376

Question 3

It was submitted by the Appellant that the estoppel in this case falls under the category of an election to affirm the contract by citing the English cases of **Mobil Oi Hellas[5]**, **Verschures Creameries[6]** and **Express Newspapers Plc[7]**. The Appellant argued that at the time of inspection when vacant possession was delivered, the 2nd Respondent had obviously noticed that the Unit did not carry a covered balcony, but nevertheless accepted the Unit, took possession and renovated the Unit. By that, the 2nd Respondent must certainly be estopped from claiming that he has been given a wrong unit by the Appellant.

Question 4

The Appellant contended that breach of natural justice occurred when the Appellant's representative at the Tribunal proceedings was allotted only 15 minutes to respond to the 2nd Respondent's allegation which was made without prior notice.

On the other hand, the 2nd Respondent submitted that the Appellant was fully aware of the allegation prior to the hearing and had even responded in writing. Thus, there was no breach of natural justice as alleged.

FINDINGS OF THE FEDERAL COURT

After hearing the respective oral submissions of the parties with due deliberation, the Federal Court ("the Court") has unanimously allowed the appeal with cost of RM 30,000.00 in favour of the Appellant subject to allocator. The Court in answering the 4 questions of law has delivered the following rulings:

Question 1: Positive

The Court accepted the Appellant's argument and concluded that based on the plain meaning of Section 16N(2) of HDA 1966, the jurisdiction of the Tribunal shall be "limited to a claim that is based on a cause of action arising from the sale and purchase agreement". The Court observed that the 2nd Respondent's claim for a covered balcony is not a term expressly provided for in the SPA. Accordingly, it was held that the Tribunal did not possess the requisite jurisdiction to hear the 2nd Respondent's claim as his cause of action did not arise from the express term contained in the SPA.

Question 2: Negative

The Appellant's argument was accepted and the Court held that the power conferred to the Tribunal to vary or set aside the contract under Section 16Y(2)(e) of HDA 1966 shall be exercisable to ensure compliance with terms contained in the statutory SPA, for instance, in situations where the contract entered into with the developer is inconsistent with the statutory SPA.

Question 3: Negative

The Court observed that the 2nd Respondent has taken possession of the Unit given to him by the Appellant, signed the inspection form and subsequently renovated the Unit. The Court opined that the 2nd Respondent has exercised his ownership rights against the Unit by carrying out renovation works on the Unit. The Appellant's argument was accepted and the Court concluded that by reason of such conduct, the 2nd Respondent's claim is not maintainable and is estopped from claiming that the wrong unit was delivered to him.

Question 4: Negative

The Court held that there was no occurrence of a breach of natural justice as the Court was of the view that the Appellant had been given opportunity and ample time to examine the documents in order to respond to the 2nd Respondent's allegation and hence there was no issue of surprise.

CONCLUSION

This is a landmark ruling laid out by the Federal Court stating that the Tribunal for Homebuyers' Claim could only decide on disputes between homebuyers and developers as expressly provided for in the sale and purchase agreements. This ruling has a great impact of limiting the jurisdiction of the Tribunal, which would also serve as a guidance to President of the Tribunal as to the scope and jurisdiction of the Tribunal.

Alycia Chuah Yuin Ting
Associate
Halim Hong & Quek
Advocates & Solicitors
alycia.chuah@hhq.com.my

Meyer Thor Xiao Xin
Pupil in Chambers
Halim Hong & Quek
Advocates & Solicitors
meyer.thor@hhq.com.my

FEDERAL COURT DECIDES ON THE REQUIREMENT OF JUST & EQUITABLE WINDING UP BASED ON ILLEGALITY

WRITTEN BY LIM YOKE WAH & HILARY LIM CHIAO HANN

Can a company be wound-up under Section 465(1)(h) of the Companies Act 2016 merely on the grounds of breach of statutory requirements by the directors of the company?

The Companies Act

Section 218(1)(i) of the Companies Act 1965 or the present Section 465(1)(h) of the Companies Act 2016 ("Companies Act") provides in simple terms that the court may order the winding up of a company if the court is of the opinion that it is just and equitable to do so. The term 'just and equitable' is not defined in the Companies Act. Over the years, the court has always had a very wide discretion in exercising its power under this section to wind up a company if it thinks fit.

The Effect of the Recent Federal Court Case

On 17 December 2020, the important question of law of what constitutes a just and equitable winding up based on illegality had been dealt with by the Federal Court in the case of ***Tan Keen Keong @ Tan Kean Keong v Tan Eng Hong Paper & Stationery Sdn Bhd & Ors and other appeals. [2020] MLJU 2204.***

This case involves a petitioner-shareholder who moved 3 separate petitions to wind up the three companies, citing the same legal basis, on just and equitable ground under S.218(i) of the Companies Act 1965. The petitioner alleged that the directors had acted in their own interests rather than in the interest of the members as a whole by siphoning funds into a separate family funds, hence making it just and equitable to wind up the companies.

In arriving at its decision, the Federal Court cited the High Court decision of ***Hj Afifi Bin Hj Hassan v Norman Disney & Young Sdn Bhd & Ors [2014] 7 MLJ 738***. In that case, the company's business was being carried out in breach of the statutory requirements of the Registration of Engineers Act 1967. The Court of Appeal found that the company's directors had deceived and misrepresented to the authorities and public that the company was owned and controlled by a Bumiputera. But in fact, the company was controlled by an Australian company through an elaborate scheme involving the execution of various agreements and the use of power of attorney. The court found that the establishment of such company is illegal as it is against Malaysian public policy and the agreements were also illegal ab initio as they were executed to circumvent the statutory requirements of the Registration of Engineers Act. On the illegality issue, the court found that if the winding up order was not granted, the company would continue to exist and carry on its business in blatant disregard of the Act. Therefore, the court must act on the illegality and a winding up order was granted as the court could not endorse the existence of a company tainted with illegality.

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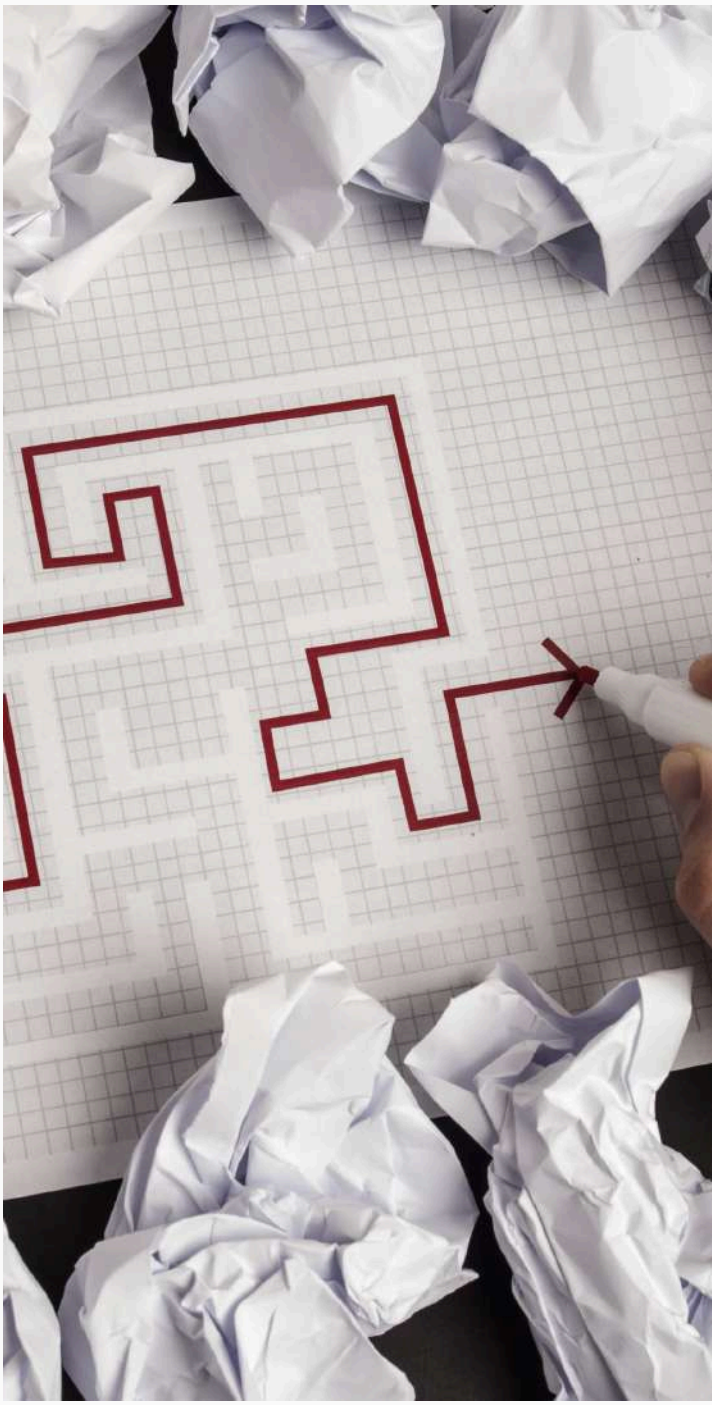
Back to the decision of the Federal Court, it was found in this case that despite the illegality of siphoning funds into a separate family fund, the companies were not formed with an illegal purpose or with the intention of circumventing the law. Hence, the Court set aside the winding up of the 2 companies.

The Federal Court held that a winding-up order should only be granted where the cessation of illegality complained of can only be achieved through or by the dissolution of the company itself or if there is no other avenue or recourse available but to wind-up the company in order to stop the illegality.

Conclusion

Mere findings or allegations of illegality and non-compliance or breach by the directors cannot result in a company's winding up based on just and equitable ground under the Companies Act.

The threshold in dealing with winding up of a company based on allegations of illegality or breach of the statute is now laid down where a winding up order should only be granted against a company where there is no other avenue or recourse available other than a dissolution of the company to stop the illegality. This decision makes it clear that a finding or allegation of illegality by itself cannot result in the winding up of a company under the just and equitable ground.



Lim Yoke Wah
Partner
Halim Hong & Quek
Advocates & Solicitors
yokewah@hhq.com.my

Hilary Lim Chiao Hann
Pupil in Chambers
Halim Hong & Quek
Advocates & Solicitors
hilary.lim@hhq.com.my