

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN SIVIL NO: W-02-164-1995

ANTARA

PERUMAHAN BERJAYA SDN. BHD. ... PERAYU

DAN

ASCOT SPORTS SDN. BHD. ... RESPONDEN

(Dalam Perkara Mahkamah Tinggi Malaya Di Kuala Lumpur
Guaman No. S5-22-198-1993
(Bahagian Sivil)

Antara

Perumahan Berjaya Sdn. Bhd. ... Plaintiff

Dan

Ascot Sports Sdn. Bhd. ... Defendan

Disatukan Dengan

Dalam Perkara Mahkamah Tinggi Malaya Di Kuala Lumpur
Guaman No. S6-22-435-1989
(Bahagian Sivil)

Antara

Ascot Sports Sdn. Bhd. ... Plaintiff

Dan

Perumahan Berjaya Sdn. Bhd. ... Defendan)

Koram: Richard Malanjum, JCA
Hashim B. Dato' Hj. Yusoff, JCA
Tengku Dato' Baharuddin Shah B. Tengku Mahmud, JCA

Grounds Of Judgment

1. Civil Suit S2-22-198-1993 (“the 1st case”) (where Perumahan Berjaya Sdn. Bhd. was the Plaintiff, and Ascot Sports Sdn. Bhd. was the Defendant) was consolidated with Civil Suit No. S6-22-435-1989 (“the 2nd case”) (where Ascot Sports Sdn. Bhd. was the Plaintiff and Perumahan Berjaya Sdn. Bhd. was the Defendant). The 2 cases were heard together. The learned trial Judge dealt only with the 1st case since the decision of the said case has the same effect on the 2nd case. The statement of claim in the 2nd case was then treated to be the statement of defence and the counterclaim of Ascot Sports Sdn. Bhd. On 17/12/1994 the learned trial Judge ordered that Perumahan Berjaya’s claim be struck out and that Ascot’s claim was allowed with costs to be assessed by the Court. The learned Judge awarded RM410,229.33 to Ascot for loss and damages incurred in purchasing and installing various goods and items

of equipment and renovations done at the premises of Perumahan Berjaya Sdn. Bhd.

2. Perumahan Berjaya was dissatisfied by the decision of the High Court and appealed against such, except for such part of the decision wherein the High Court Judge decided that the contract between the Appellant and Ascot Sports Sdn. Bhd. (“the Respondent”) was “subject to contract”.
3. We unanimously dismissed the appeal and now give our reasons for doing so.

Facts Of The Case

4. On 21/09/1988, through a letter of offer Perumahan Berjaya offered the tenancy of their premises measuring 9,373 sq. ft. identified as DJ Centre, Block 3, 2nd Floor, Lots L2.6 to L2.10 (“the said premises”) to Ascot. On 29/09/1993 Ascot accepted the said offer. It is not disputed that Ascot paid the 3 months’ rent deposit and also the electricity deposit. It is also not disputed that when the parties negotiated for the said premises, the Ministry of Finance (MOF) had given Ascot a general licence to conduct off-course betting and book-makings

through-out the country for the next 20 years, through 227 outlets throughout Malaysia. The said premises at DJ Centre was purportedly to be the second outlet.

5. When negotiations began between the parties, See Hoy Chan Properties Sdn. Bhd. was the representative of Perumahan Berjaya. See Hoy Chan Properties Sdn. Bhd. was represented by one Mr. Yeoh Kim Chin. The negotiations were between the representative of Ascot and Mr. Yeoh Kim Chin. It is not disputed that while negotiations were going on, Perumahan Berjaya took over the management of the said premises from See Hoy Chan Properties Sdn. Bhd.
6. On 15/10/1988 Ascot took the keys to the said premises in order to carry out renovations of the said premises to suit their business. It is also not denied that extensive renovations were done and completed just before Christmas 1988.
7. On 16/11/1988 Perumahan Berjaya sent three sets of Tenancy Agreement to Ascot to be executed and returned by Ascot to Perumahan Berjaya within 7 days. It was not denied by Perumahan Berjaya that there was no negotiations between

the parties in respect of the terms and conditions of the said Tenancy Agreements. As a result Ascot refused to execute the three sets of Agreement and sent them back to Perumahan Berjaya. Ascot also suggested certain amendments to the Agreements in their letter to Perumahan Berjaya dated 28/12/1988. Perumahan Berjaya however ignored Ascot's amendment proposals and instead included some other terms in the second draft which according to Ascot, imposed extra financial commitments to them. As a result, Ascot through their solicitors serve a notice dated 21/03/1988 rescinding the said tenancy.

The Appeal

8. The main issue in the instant appeal is whether there existed a valid contract between Perumahan Berjaya and Ascot?

9. It was submitted by learned counsel for Perumahan Berjaya ("the Appellant") that the learned High Court Judge made an error in allowing damages in favour of Ascot Sports ("the Respondent") in the sum of RM410,229.33 after he held that there was no contract formed, since the tenancy was "subject to a contract". It was further argued that the learned trial Judge

did not address the issue regarding damages. More so, when Ascot's claim was based on a breach of contract and not a claim for quantum meruit. Reference was made to the case of **Ayer Hitam Tin Dredging Malaysia Bhd. v YC Chin Enterprise Sdn. Bhd. [1994] 2 MLJ 754** where the Supreme Court held:-

“5. Since the plaintiff had commenced the preliminary works, with the knowledge but not necessarily the consent of the defendant, the liability of the defendant would be on a quantum meruit basis not exceeding RM300,000, having regard to para (v) of the letter.”

10. It was also submitted no evidence was adduced by Respondent to substantiate its counter-claim from the 3 major items, i.e.:

- (i) Renovations;
- (ii) Deposits; and
- (iii) Removal costs.

11. Learned counsel for Ascot on the other hand submitted that there was a valid contract between them as found by the learned trial Judge (refer Appeal Record page 311 at paragraph C-D) based on the Respondent's acceptance dated 28/09/1983 of the Appellant's letter of offer dated 21/09/1988. It was argued that the learned trial Judge fell into error that while holding that there was an acceptance of the offer, yet he said there was no contract.

Court's Decision

12. Looking at the Appellant's own amended statement of claim (see Appeal Record 72):-

Paragraph 1: that by a letter dated 21/09/1988 (the first letter) the Appellant and the Respondent confirmed an Agreement that the former would let and the latter would rent the said premises;

Paragraph 2: the first letter was later reconfirmed by the Respondent through a letter dated 28/09/1988 (the second letter) accepting the terms of the letting;

paragraph 3: the Appellant's letter to the Respondent dated 17/10/1988 (the third letter) confirming the rental of the said premises at RM1.35 per sq. ft.

13. It is obvious from the above three letters between the Appellant and the Respondent that there was a clear offer by the Appellant to let the said premises to the Respondent at RM1.35 per sq. ft. and that the Respondent had accepted the said offer upon those basic terms. Therefore we hold that there did exist a valid contract between the Appellant and the Respondent. This was found as a fact by the learned trial Judge when he said in his Grounds of Judgment (Appeal Record page 311 paragraph C) that it was not disputed that when the Respondent accepted to rent the said premises, they paid a three months' rental deposit. In fact on 15/10/1988 the Respondent even took the keys to the said premises in order to carry out extensive renovations to the said premises in order to suit their business.

14. But when the Appellants subsequently sent to the Respondent three sets of Tenancy Agreement, without any prior

negotiations between them, imposing new conditions which would involve extra financial commitments on the Respondent, (which were not denied by the Appellant) the Respondent therefore sent through their solicitor a notice dated 21/03/1989 rescinding the said tenancy.

15. The learned trial Judge in his Grounds of Judgment, while holding that it could not be denied that there was an offer and acceptance in respect of the tenancy between the Appellant and the Respondent, yet decided that the said offer and acceptance was subject to a formal written tenancy Agreement. The learned Judge relied on the cases of **Tai Tong Realty Co. (Pte) Ltd. v Galstawn & Anor [1973] 2 MLJ 95** and the case of **Ken Man Co. Ltd. v Cheah Yee Fong & Anor [1963] MLJ 140**. At the risk of repetition, the Appellant's own pleading in their amended statement of claim affirmed the offer by the Appellant and the acceptance by the Respondent to rent the said premises at RM1.35 per sq. ft. (Appeal Record page 47).

16. Section 10(1) of the Contracts Act 1950 provides:-

“10. (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”

17. Based on the above, we are of the view that there was already a valid contract between the Appellant and the Respondent, the moment the offer was accepted with good consideration. We therefore with respect, find that the learned trial Judge fell into error when he said the Tenancy Agreement was still “subject to contract”.
18. The learned trial Judge however in his Ground of Judgment (Appeal Record page 322) was of the view that he agreed with the Respondent that the Appellant had taken the attitude that either the Respondent had to take (the tenancy) on the Appellant’s (new) terms or none at all. He found there was no evidence to contradict this. As such the learned trial Judge was of the view that the Respondent had the right to terminate or rescind the contract. We agree with this finding of the learned trial Judge.

19. Regarding the effect of rescission of a contract, section 76 of the Act provides:-

“76. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.”

20. The Respondent in its counter-claim particularised its special damages as follows:-

(a)	Renovation costs	RM390,834.33
(b)	Deposits and contributions paid to LLN & Telekom	RM 16,700.00
(c)	Removal costs	<u>RM 2,695.00</u>
	Total Expenditure	<u>RM410,229.33</u>

(See Appeal Record page 61).

21. The above amount was awarded by the learned trial Judge to the Respondent when he found in their favour and at the same time struck out the Appellant’s claim. On this issue 5 witnesses from the Respondent had given their evidence to substantiate

the Respondent's counter-claim and their testimony remained unchallenged nor rebutted by the Appellant (see Appeal Record pages 110 and 112). The Respondent had also claimed for a refund of the deposits which they had paid to the Appellant's totaling RM43,964.65. This was not disputed by the Appellants.

22. For the above reasons, we dismissed the appeal and ordered that the case be remitted to the High Court for assessment of general damages before the Senior Assistant Registrar. The deposit was to be refunded to the Respondent. We made no order as to costs.

Date: 19th June 2009

Signed.
(DATO' HASHIM BIN DATO' HJ. YUSOFF)
Judge

Parties:

Joy Wilson for the Appellant

Dato' Sivaparanjothi with K.T. Wong for the Respondent

Cases referred to:-

- (1) Ayer Hitam Tin Dredging Malaysia Bhd. v YC Chin Enterprise Sdn. Bhd. [1994] 2 MLJ 754;
- (2) Tai Tong Realty Co. (Pte) Ltd. v Galstawn & Anor [1973] 2 MLJ 95;
- (3) Ken Man Co. Ltd. v Cheah Yee Fong & Anor [1963] MLJ 140;