

Mampu Jaya Sdn Bhd v Nazri Aziz & Wong [2005] MLJU 628

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High Court (Kuala Lumpur)

Azmel Bin Hj Maamor, J

GUAMAN CIVIL NO S5-24-2625-2002

28 August 2005

Case Summary

LEGAL PROFESSION — Remuneration — Costs — Solicitor's costs — Whether solicitor entitled to utilise the purchaser's purchase price to set-off the fees owing from the developer to them — Whether money payable to the Housing Development Account

D. Paramalingam (*Krish Maniam & Co*) for the Plaintiff

T.S. Oon, Sekar Palaniandy (Nazri Aziz & Wong) for the Defendant

GROUNDS OF JUDGMENT

By way of a Saman Pemula the Plaintiff applied for an order that the sum of RM 139,927.00 which was paid by the Bahagian Pinjaman Perumahan Perbendaharaan Malaysia (BPP) as a loan to one, Mohamed Sabri bin Baharom, (the said purchaser) in order to facilitate the purchase of an apartment unit known as Parcel No. 8-7-H, Level 7, Block No. 8, Phase 2, Gurney Heights Condominium Project situated in the Mukim of Setapak in the State of Wilayah Persekutuan Kuala Lumpur (the said Unit) to the Defendant as stakeholder to be released to the Plaintiff, the developer of the said project.

The brief facts of the case are as follows. The land on which the said project was developed was owned by Datuk Bandar Kuala Lumpur (the Vendor). The Plaintiff was employed by the Vendor as the developer of the said project. And the Defendant, as a firm of Solicitors, were engaged by the developer to be the Solicitors for the sale transactions between the Vendor, Developer and they would be purchasers of the units in the said project., It is a term of the sale and purchase agreement (the said agreement) that all the purchase price of units would be paid to the developer. However the purchase money would first be handed by the purchaser or their financiers to the Defendant who act as the stakeholder who would subsequently hand it over to the Plaintiff.

Mohamed Sabri bin Baharom was the purchaser of the said unit (the said purchaser). Being a government servant, the said purchaser applied and obtained housing loan from BPP to facilitate payment of the purchase price of the said unit costing RM228,780.00. The amount of loan obtained by the said purchaser was RM139,927.00. This sum was paid by BPP to the Defendant, who must have agreed to be the stakeholder in the said transaction.

During that time the Plaintiff had owed the Defendant their legal fees which amounted to more than the sum paid by BPP to the Defendant. The Defendant had previously issued their bill of costs to the Plaintiff who did not raise any objection to the amount claimed by the Defendant. Yet on several requests for payment, the Plaintiff, had failed to settle the Defendant's bill of costs. In the light of the above circumstances, the Defendant decided to use the money paid by BPP to set-off the sum against the bill of costs by the Defendant to the Plaintiff. It was due to this action taken by the Defendant that the Plaintiff brought this action against the Defendant.

The sole issue to be determined in this case is whether the Defendant had the legitimate rights to utilise the money paid by BPP to them to set-off the sum against the bill of costs by the Defendant to the Plaintiff. It was contended by the Defendant that they were justified to take that course of action against the Plaintiff by virtue of rule 7(a)(v) of the Solicitors Account Rule 1990. Rule 7(a) states :

DRAWING MONEY FROM CLIENT ACCOUNT.

"7. There may be drawn from client account -

- (a) in the case of client's money —
 - (i) money properly required for a payment to or on behalf of the client;
 - (ii) in the case of solicitor trust money, money properly required for a payment in the execution of the particular trust;
 - (iii) money properly required for or towards payment of debt due to the solicitor from the client or in reimbursement of money expended by the solicitor on behalf of the client;
 - (iv) money drawn on the client's authority; and
 - (v) money properly required for or towards payment of solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs." (emphasis added).

The Plaintiff however, disputed the contention by the Defendant. The Plaintiff argued that being a housing developer, the Plaintiff was bound by the provisions of the Housing Developer (Control and Licensing) Act, 1966 (Act 118) and Regulations 1989 and 1991 especially S 7A(3) of Act 118 which reads :

7A. Licenced housing developer to open and maintain Housing Development Account.

- (1)
- (2)
- (3) The licensed housing developer shall pay into the Housing Development Account of a housing development the purchase monies received by the licensed housing developer from the sale of housing accommodation in the housing development

and any other sum or sums of money which are required by regulations under this Act to be paid into the Housing Development Account."

The Plaintiff further contended that it was highly improper for the Defendant to withhold the purchase price paid by BPP to the Defendant and refuse releasing the same to the Plaintiff because the Plaintiff had a duty under S 7(3) of Act 118 to pay the purchase money into its Housing Development Account.

After having considered the arguments of both parties I was very inclined to agree with the Plaintiffs contention. In my view the said purchaser's purchase money from BPP paid to the Defendant would not just have ended in the Plaintiffs personal account. That money had another journey to go ie into the Plaintiff's Housing Development Account, in accordance with the provision of S 7A(3) of Act 118. This is a statutory requirement. All parties involved in such transaction including the solicitors should not contravene that statutory requirement. In the light of clear provision of S 7A(3) of Act 118 it is no defence for the Defendant to invoke Rule 7(a)(v) of the Solicitors Account Rule 1990. Such purchase money should be immediately released to the Plaintiff by the Defendant so that the said money could be immediately paid into the Plaintiffs Housing Development Account. It is obvious to me that the main purpose of such procedure was to safeguard the interests of housing purchasers against unscrupulous developers. Interests of the purchasers would far outweigh the interests of other parties including the solicitors and developers.

For the reasons as I have stated above I allow the Plaintiff's claim with costs.