

ALI REZA ZIBA HALAT MONFARED & ANOR
v. CHEW BEN BEN & ORS

HIGH COURT MALAYA, KUALA LUMPUR

JOHAN LEE KIEN HOW J

[SUIT NO: WA-22NCvC-506-09-2017]

1 SEPTEMBER 2023

Abstract – *In order for a power of attorney to be valid, it is imperative that it complies with the prescribed law. The power of attorney must be properly authenticated as per Form 1 of the First Schedule of the Powers of Attorney Act 1949 ('Act') as mandatorily provided pursuant to s. 3(1)(a) of the Act. Failure to comply with the authentication clause renders the power of attorney invalid and any legal claim founded by the donee of such invalid power of attorney is unsustainable in law.*

LAND LAW: *Transfer – Validity of – Sale and purchase of property pursuant to power of attorney – Challenge against transfer on allegation of prior impugned power of attorney in favour of second plaintiff – Whether impugned power of attorney valid – Whether attestation clause contained three key components in Form 1 of First Schedule of Powers of Attorney Act 1949 – Whether impugned power of attorney complied with prescribed wordings in Form 1 – Whether impugned power of attorney null and void*

The second plaintiff alleged that he was the lawful attorney of the first plaintiff in respect of the first plaintiff's property pursuant to the alleged power of attorney registered in the High Court ('impugned PA'). The first plaintiff, an Iranian national, who had spent some time in Malaysia, had been serving his time in an Iranian jail. The second plaintiff subsequently discovered that the property, in breach of the impugned PA, was transferred to the first and second defendants pursuant to a sale and purchase agreement ('SPA') pursuant to a power of attorney allegedly given by the first plaintiff to the fourth defendant as witnessed by the third defendant, both of whom are advocates and solicitors. In this action, the second plaintiff claimed for: (i) a declaration that the SPA was null, void and unenforceable; (ii) a declaration that any title and/or interest acquired by the first and second defendants in the property was defeasible and be set aside; and (iii) a declaration that any rights or dealings stemming from the SPA including but not limited to any application for loans, charges, caveats and/or assignment was null, void and unenforceable. The issues for the court's determination were: (i) whether the impugned PA was valid; (ii) if yes, whether the SPA and Form 14A were null and void; and (iii) whether the claim for conspiracy to injure was actionable.

A Held (dismissing plaintiffs' claim with costs):

- (1)** Compliance with Form 1 of the First Schedule of the Powers of Attorney Act 1949 ('Act') is made mandatory by s. 3(1)(a) of the Act, failing which the power of attorney is invalid. In the present case, besides its failure to comply with the full wordings in the attestation stated in Form 1, the attestation clause in the impugned PA did not have the three key components contained therein. This was not something 'minor defect, error or imperfection'. The impugned PA had deviated substantially from the prescribed wordings in Form 1 and therefore, s. 62 could not shield the impugned PA from the fate of being null and void. (paras 22, 30, 42 & 44)
- (2)** For there to be a power, coupled with interest, the power must be given (i) for sufficient consideration; and (ii) for the purpose of securing some benefit to the donee, which must be expressly provided in the instrument. The impugned PA, despite being an irrevocable power coupled with interest of the property, there was no mention of consideration at all. As the nature and extent of all the powers and terms are contained in the impugned PA, s. 92 of the Evidence Act 1950 bars any oral evidence to contradict, vary, add to or subtract from the express terms of the written document. Therefore, the extrinsic/oral evidence sought to be introduced by the second plaintiff was inadmissible to prove that the impugned PA was given for consideration and as security for moneys advance by him to the first plaintiff. Hence, the impugned PA was null and void and the second plaintiff's claim was unsustainable. (paras 46, 48, 56, 57 & 61)
- (3)** The charge was created and signed in June 2015 and was registered in October 2015. In the circumstances, it was impossible for the impugned PA to be signed and given on 17 March 2015. Further, there was no concrete proof to show that the impugned PA was signed by the first plaintiff on 17 March 2015. In fact, the notary public who attested the impugned PA ('PW1') could not confirm or ascertain whether the first plaintiff had executed the impugned PA on 17 March 2015 and admitted that the first plaintiff did not initial on each page of the impugned PA. PW1 also was not sure whether the contents of the impugned PA were part of the document that he purportedly authenticated. Based on the statutory declaration signed by the first plaintiff, it was clear that the impugned PA was never given by the first plaintiff to the second plaintiff. Therefore, there was doubt cast on the authenticity of the impugned PA. The second plaintiff, who has the burden to prove the validity of the impugned PA had failed to do so and therefore, the plaintiff had failed to establish his claim on the balance of probabilities. (paras 62, 63, 69-71, 77 & 78)

- (4) The basis upon which the second plaintiff brought the action in his own name was because the first plaintiff owed him money. This totally contradicted the second plaintiff's pleaded case that he commenced the action in his own name based on the impugned PA. The impugned PA only gave the second plaintiff the authority to deal with the first plaintiff's assets and did not, in any way whatsoever, secure any personal benefit and rights of the second plaintiff over the property. The commencement of the action was thus wrong on all counts. (paras 83 & 90) A
B
- (5) Since the second plaintiff had accepted that the first plaintiff had signed Form 14A in the third defendant's presence, the mischief and purpose of s. 211 of the National Land Code ('NLC') had been fulfilled. The transferor who had executed the Form 14 had never denied that he had executed the form and had, in fact, confirmed the same. Accordingly, there was no breach of s. 211 of the NLC and Form 14 was a valid instrument and once registered, it had become indefeasible under s. 340(1) of the NLC, in favour of the first and second defendants. Hence, the first and second defendants had the indefeasibility title to the property. (para 102) C
D
- (6) The second plaintiff's pleaded case was that the fourth defendant together with other defendants had unlawfully and/or fraudulently conspired to injure the second plaintiff by unlawful means in depriving the second plaintiff's rights to the property. However, he had not tendered any proof. The second plaintiff had also failed to prove that there was an intention to injure by the fourth defendant together with other defendants. Hence, the claim for conspiracy to defraud was not actionable as the second plaintiff had failed to prove the elements to a conspiracy claim. In any event, as the second plaintiff did not have any security rights in the property, there was simply nothing to injure the second plaintiff. (paras 108, 109 & 111) E
F

Case(s) referred to:

- Bryant, Powis and Bryant La Banque du Peuple* [1893] AC 170 (*refd*) G
- Cubic Electronic Sdn Bhd (In Liquidation) v. MKC Corporate & Business Advisory Sdn Bhd & Another Appeal* [2016] 3 CLJ 676 CA (*refd*)
- Deepak Jaikishan Jaikishan Rewachand & Anor v. Intrared Sdn Bhd & Anor* [2013] 7 MLJ 437 (*refd*)
- Faridah Md Lazim v. Edham Abd Ghani* [2021] 1 LNS 451 HC (*dist*) H
- Hassnar MP Ebrahim v. Sulaiman Pong & Ors* [2017] 1 LNS 1167 CA (*refd*)
- He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal* [2020] 7 CLJ 271 FC (*refd*)
- Kenanga Investment Bank Bhd v. Swee Joo Bhd & Ors And Another Appeal* [2017] 1 LNS 2086 CA (*dist*)
- KHK Development Sdn Bhd v. Majlis Perbandaran Padawan* [2021] 1 LNS 99 HC (*dist*) I
- Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418 FC (*refd*)

- A** *Lim Eng Chuan Sdn Bhd v. United Malayan Banking Corporation & Anor* [2010] 9 CLJ 637 CA (*refd*)
Lim Eng Chuan Sdn Bhd v. United Malayan Banking Corporation & Anor [2013] 5 CLJ 425 FC (*refd*)
Loh Chun Hoo v. Loh Chun Hoo & Ors [2022] 1 LNS 25 HC (*refd*)
Ong Seok Fong & Ors v. Ng Tong Lai & Anor [2022] 1 LNS 771 HC (*refd*)
- B** *Rajamani Meyappa Chettiar v. Eng Beng Development Sdn Bhd & Ors* [2021] 1 LNS 2233 HC (*refd*)
Renault SA v. Inokom Corporation Sdn Bhd & Anor And Other Applications [2010] 5 CLJ 32 CA (*refd*)
Repco (Malaysia) Sdn Bhd v. Tan Toh Fatt & Ors [2012] 1 LNS 116 HC (*refd*)
Sidambaram Torosamy v. Lok Bee Yeong [2018] 3 CLJ 599 CA (*refd*)
- C** *Subramania Pillay v. Sundarammal* [1968] 1 LNS 148 FC (*refd*)
Tindok Besar Estate Sdn Bhd v. Tinjar Co [1979] 1 LNS 119 FC (*fol*)
Wee Huay Fong v. Pentadbir Tanah, Klang & Anor [2002] 6 CLJ 512 HC (*refd*)
Wee Tiang Kheng & Ors v. Ngun Nii Soon & Ors [1989] 1 CLJ 267; [1989] 2 CLJ (Rep) 639 HC (*refd*)
- D** *Wee Tiang Peck v. Teoh Poh Tin* [1994] 1 LNS 154 HC (*fol*)
- Legislation referred to:**
Evidence Act 1950, s. 92
Interpretation Act 1967, s. 62
National Land Code, ss. 211, 340(1), Form 14A
Powers of Attorney Act 1949, s. 3(1)(a), (2)
- E** Sarawak Land Code, s. 112(3)
- For the plaintiff - Michael Chow & Neoh Kai Sheng; M/s Michael Chow*
For the 1st & 2nd defendants - Chong Ki Keong & Hazalina Haron; M/s KK Chong & Co
For the 3rd defendant - Mark Lau & Talitha Shim; M/s Sreenevasan & Young
- F** *For the 4th defendant - Tan Keng Teck & Ung Zhee Laine; M/s Lim Kian Leong & Co*
- Reported by S Barathi*

JUDGMENT

G Johan Lee Kien How J:

Introduction

- H** [1] Manoj Singh (“second plaintiff”) came to know that a property of Ali Reza (“first plaintiff”) in Ampang, Kuala Lumpur was transferred to Chew Ben Ben (first defendant) and his wife Zhao Tong (“second defendant”), witnessed by Kevin Sathiaselan (“third defendant”). The first plaintiff had also, allegedly, given a power of attorney appointing Dato’ Syed Alwi (“fourth defendant”) as his attorney. Dissatisfied with this, the second plaintiff in his own capacity and on behalf of the first plaintiff then filed a
- I** suit (“this action”) against all the defendants claiming that he has the valid power of attorney of the first plaintiff. He also alleged that without his involvement, the transfer perfected was invalid.

[2] From the time this action was filed up until the date of this grounds of judgment, the plaintiff, an Iranian national, has been serving time in an Iranian jail. The first plaintiff had previously spent sometimes in Malaysia and was bestowed a datukship during the time here. This judgment is delivered after the full trial conducted pertaining to this action in which the second plaintiff alleged that the defendants had committed fraud and conspiracy to injure.

A

B

Facts Of The Case

[3] The first plaintiff was formerly the registered proprietor of all that piece of property held under Title No. PN 35412, Lot 9517, Mukim Ampang, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan, Kuala Lumpur and bearing postal address at Lot No. 9, Jalan Keranji 2 of Jalan Kedondong, Taman Tasik Ampang, Ampang Hilir, 55000 Kuala Lumpur ("the property").

C

[4] The second plaintiff is a Malaysian citizen and is said to be the lawful attorney of the first plaintiff in respect of the property pursuant to the alleged power of attorney registered in the High Court of Ipoh under registration No. 4396/2015 ("the impugned PA").

D

[5] The first and second defendants are married couple and are the current registered proprietors of the property. The third and fourth defendants are advocates and solicitors.

E

[6] The second plaintiff alleged that the impugned PA was executed by the first plaintiff, which among others, had assigned to the second plaintiff any and/or all of the first plaintiff's present or contingent rights to deal with all of his real estate including but not limited to all dealings over the property.

F

[7] The second plaintiff subsequently discovered that the property, in breach of the impugned PA, was transferred to the first and second defendants pursuant to a sale and purchase agreement dated 23 March 2016 ("the SPA").

G

[8] The plaintiffs therefore, through this action, claimed for, *inter alia*:

- (i) a declaration that the SPA is null, void and unenforceable;
- (ii) a declaration that any title and/or interest acquired by the first and second defendant in the property is defeasible and be set aside; and
- (iii) a declaration that any rights or dealings stemming from the SPA including but not limited to any application of loans, charges, caveats and/or assignment is null, void and unenforceable.

H

I

A The Plaintiff's Case

[9] It is to be noted that the first plaintiff never appeared nor attended any of the proceedings. He is said to be imprisoned in an Iranian jail. His action here is said to be initiated on his behalf by the second plaintiff. The second plaintiff hinged his submissions on four key arguments namely:

- B**
- (i) that the second plaintiff has *locus standi* to commence this action in his own name and in the first plaintiff's name;
 - (ii) that the SPA is a void agreement;
 - C** (iii) that the transfer form, namely, Form 14A ("Form 14A") of the National Land Code ("NLC") registering the transfer of the property is a void instrument under the NLC;
 - (iv) that the power of attorney dated 15 August 2016 ("the fourth defendant's PA") is null and void because the first plaintiff was not in the Commonwealth of Dominican on the said date, having left the country since 16 July 2016; and
 - D** (v) that all the defendants had unlawfully conspired to injure the second plaintiff.

The Defendants' Case

- E**
- [10] At all material time, the defendants stand firm by their defence that the impugned PA is invalid for want of meticulous authentication as prescribed in law, and in turn, this action fails *in limine*. The impugned PA, being irrevocable in nature, is also invalid for want of consideration.
- F**
- [11] The defendants further submitted that even if this court find that the impugned PA is valid, the impugned PA does not authorise the second plaintiff to commence this action in his own name and in the first plaintiff's name to recover the property on behalf of the latter.

The Trial

- G**
- [12] The second plaintiff called seven witnesses during trial. The second plaintiff himself testified as PW7. Meanwhile, the defendants called upon a total of four witnesses. This includes the first defendant himself ("DW2"), third defendant ("DW3") and the fourth defendant ("DW4").

H Issues

[13] Despite the abundance issues agreed upon by all parties before the trial, I find that the primary decisive issues in this case are:

- (i) whether the impugned PA is valid;
- I** (ii) if yes, whether the SPA and Form 14A are null and void; and
- (iii) whether the claim for conspiracy to injure is actionable.

Findings Of The Court

[14] After perusing the evidence and testimonies tendered throughout the trial and the submissions by the parties, I hold that the plaintiffs' claim be dismissed with costs. Herein are my reasons.

Impugned PA

[15] Before this court consider the plaintiffs' claim against the defendants, it is necessary for this court to ascertain whether the second plaintiff has *locus standi* to initiate this action.

[16] After a thorough perusal of the statement of claim ("the SOC"), it is crystal clear that the second plaintiff initiated this action based on the impugned PA which allegedly vested in him such power to commence this action. The SOC (encl. 262, p. 18) says:

This action is commenced by the 2nd Plaintiff in his own name and in the name of the 1st Plaintiff **pursuant to the said PA**. (emphasis added)

[17] To rebut, the defendants insisted that the impugned PA is invalid in the eye of law and was only created by second plaintiff for his personal interests. Thus, the second plaintiff has no *locus standi* to file this action. Since the heart of this action hinges on the validity of the impugned PA and the *locus standi* of the second plaintiff, I shall first focus on the legal issues surrounding them.

[18] It is the defendants' case that if the impugned PA is invalid in law, or if the impugned PA on its true construction does not support the rights asserted by the second plaintiff (as an assignee and security holder), this action must be dismissed.

[19] The second plaintiff alleged that the impugned PA was executed by the first plaintiff in March 2015, which among others, had assigned to the second plaintiff any and/or all of the first plaintiff's present or contingent rights to deal with his real estate including but not limited to the property.

[20] However, the defendants challenged the validity of the impugned PA from five different aspects:

- (i) that the form of authentication in the impugned PA does not comply with the requirements of s. 3(1)(a) and Form I of First Schedule of the Powers of Attorney Act 1949 ("the Act");
- (ii) that the impugned PA can only be interpreted from considering what is contained within the four walls of the document. That is to say, no parol evidence is to be permitted on the terms and conditions of the impugned PA;
- (iii) that, in any event, the parol evidence which the second plaintiff seeks to admit are not credible;

- A (iv) that the second plaintiff is estopped and/or precluded from asserting the impugned PA; and
- (v) that the impugned PA being an irrevocable power of attorney is void for the lack of consideration.

B **Authentication**

[21] The crux of the defendants' argument is that the impugned PA is invalid due to various reasons. After analysing all of them, I have to agree with the defendants that the impugned PA is indeed invalid. Among others, it is the defendants' case that it was not properly authenticated pursuant to s. 3 of the Act.

C

[22] The defendants premised that the impugned PA was not properly authenticated as per Form I of the First Schedule of the Act ("Form I"). Compliance with Form I is made mandatory by s. 3(1)(a) of the Act failing which, the power of attorney is invalid. For ease of reference, s. 3(1)(a) of the Act is reproduce here:

D

(1) No instrument purporting to create a power of attorney executed after the commencement of this Act shall have any validity to create such power within **Peninsular Malaysia unless:

E

(a) if executed within *Peninsular Malaysia, the instrument is executed before, and is authenticated in the appropriate form set out in the First Schedule hereto by –

F

[23] I am guided by the apex court's judgment of *Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418; [2017] 4 MLJ 697, where Jeffrey Tan FCJ held that (at p. 437 (CLJ); p. 721 (MLJ), paras F to G):

G

[13] Section 3(2) of the PA Act provides that in order to have validity, a power of attorney must have a form of authentication, which must be 'meticulously complied with' (see *Lim Eng Chuan Sdn Bhd v. United Malayan Banking Corp & Anor* [2011] 1 MLJ 486 at p 505 per Low Hop Bing JCA). The want of a form of authentication 'would render the instrument invalid' (*Lim Eng Chuan Sdn Bhd v. United Malayan Banking Corp & Anor* at p 533 per Zaharah Ibrahim JCA as she then was)

H

... The trial court could not say that the impugned PA was valid in a vacuum, without reference to the PA Act. On the validity of the impugned PA, the provisions of the PA Act could not be ignored. *Since the impugned PA lacked the required form of authentication, it had no validity, that is, even if the alleged signature of the first appellant on the impugned PA were genuine.* That was the effect of s 3 of the PA Act. (emphasis added)

I

[24] Also, the judgment of the Court of Appeal in *Lim Eng Chuan Sdn Bhd v. United Malayan Banking Corporation & Anor* [2010] 9 CLJ 637; [2011] 1 MLJ 486 is instructive: "the use of the appropriate form is therefore not an option. Neither are the forms mere examples." On appeal, the Federal

Court (in *Lim Eng Chuan Sdn Bhd v. United Malayan Banking Corporation & Anor* [2013] 5 CLJ 425; [2013] 3 MLJ 161) upheld the Court of Appeal's decision. Relevantly, the Federal Court reinforced the legal proposition of "... scrupulous compliance with the form of authentication" in respect of a power of attorney.

[25] To rebut, the plaintiffs argued that this court should not entertain the contention on the validity of the authentication clause. It is the Registrar and not the trial court who shall determine if the authentication clause can be accepted. The plaintiffs cited the judgment in *Faridah Md Lazim v. Edham Abd Ghani* [2021] 1 LNS 451 as authority regarding this.

[26] With respect, this argument is flawed. The case of *Faridah Md Lazim (supra)* cited by the plaintiffs is a case dealing with the authentication clause under s. 3(1)(b) for a power of attorney executed outside the peninsular of Malaysia. Under s. 3(1)(b), it is clear that for a power of attorney executed outside the peninsular of Malaysia, when the Registrar is satisfied with the wordings of the authentication clause, he may register the same. This is not the case for authentication clause under s. 3(1)(a) as in our present case. Under s. 3(1)(a), for all powers of attorney executed within peninsular of Malaysia, the authentication clause must strictly follow the exact wordings of Form I. The non-compliance of this would render the power of attorney null and void. That is the undisputed legal position through s. 3(1)(a) and all the decided cases mentioned above.

[27] The plaintiffs further postulated that even assuming that the authentication in the impugned PA is irregular, the deed having been registered and accepted by the Registrar remains valid unless revoked as decided by the Court of Appeal in *Kenanga Investment Bank Bhd v. Swee Joo Bhd & Ors And Another Appeal* [2017] 1 LNS 2086. Hence, the plaintiffs added that the defendants have no locus to challenge, nor do the plaintiffs have the legal or evidential burden to establish, the validity of the impugned PA. It is a matter between the first plaintiff as the donor and the second plaintiff as the donee. The requirement in essence is just the embodiment of the doctrine of *res inter alios acta* (not the concern of others). Based on *Kenanga Investment Bank (supra)*, the plaintiffs argued that even though the authentication clause was arguably irregular, the impugned PA remains valid.

[28] I find this argument erroneous. In *Kenanga Investment Bank (supra)*, the court was again dealing with the power of attorney executed outside peninsular Malaysia (in Sarawak) which comes under s. 3(1)(b) of the Act, where there is no specific prescribed form of authentication. Our present case is totally distinguishable from *Kenanga Investment Bank (supra)* because the impugned PA was executed within Peninsular Malaysia and s. 3(1)(a) has made compliance with the authentication clause stated in Form I mandatory.

A [29] The plaintiffs then asserted that the defendants' contention on the requirement of "meticulous compliance" fails to hold water. According to the plaintiffs, whether there was meticulous compliance depends on the facts and circumstances. Any minor defect, error or imperfection will not impugn an otherwise perfectly valid authentication clause (See: *Rajamani Meyappa Chettiar v. Eng Beng Development Sdn Bhd & Ors* [2021] 1 LNS 2233).

B [30] However, as mentioned earlier, the provision of s. 3(1)(a) and s. 3(2) could not be more lucid: non-compliance of the authentication clause as per Form I renders the power of attorney invalid. It is apt to note that in *Rajamani Meyappa Chettiar (supra)*, the form of authentication used in the plaintiff's power of attorney was the full wording in the form of attestation stated in the Act without deleting any of the words therefrom. That is not what happened in our present case. Besides its failure to comply with the full wordings in the attestation stated in Form I, the attestation clause in the impugned PA does not have the three key components contained therein (which shall be discussed later). This is not something "minor defect, error or imperfection" as alleged by the plaintiffs.

C [31] I also refer to the decision of the court in *Ong Seok Fong & Ors v. Ng Tong Lai & Anor* [2022] 1 LNS 771 that mere addition of the words "... and that they understand the contents and effects hereof" was suffice to render the attestation invalid for the purpose of s. 3(1)(a) of the Act. The defect of the attestation clause in our present case is far more serious than that: all the three key elements of the prescribed wordings in Form I are missing!! How could this be a valid power of attorney???

E [32] A comparison between Form I and the impugned PA would reveal that the impugned PA does not comply with the prescribed form. In Form I, the authentication clause must carry the following:

F I ... (Magistrate, Justice of the Peace, Land Administrator, Notary Public, Commissioner for Oaths, Bank Official or Advocate and Solicitor of the High Court in Malaya) officiating [or practising] at ..., hereby certify that the signature of the signature/thumb-mark of the donor above named was written/affixed in my presence on this ... day of ... 20 ..., and is, to my own personal knowledge, [or according to information given to me by trustworthy and respectable persons, namely ... of ... and ... of ..., which information verily believe,] the true signature thumb-mark of ... who has acknowledged to me that he is/is not is of full age and that he has voluntarily executed this instrument.

H Witness my hand ...

I

Meanwhile, the authentication clause in the impugned PA (exh. P2) has the following wordings: A

State: Federal Territory

Country: Malaysia

I, a Notary Public in and for said Country and State, hereby certify that **Ali Reza Ziba Halat Monfared Gholamreza**, personally appeared before me this day and acknowledged execution of the foregoing as his/her free voluntary act and deed. B

[17 Mar 2015]

Witness my hand and notarial seal this __ day of __ 2015 C

[33] By this comparison, it can be clearly seen that the wordings used in both forms are completely different. Beside the differences in wordings, there are also substantive requirements in Form I which are missing from the form of authentication in the impugned PA attested by PW1. The form of authentication in Form I requires the authenticating attester to certify three things, namely: D

- (i) that the donor signed his signature on the power of attorney in the presence of the attester;
- (ii) that the attester has personal knowledge that the signature is that of the donor or has relied on information given to him by a reliable and trustworthy person that the signature is that of the donor; and E
- (iii) that the donor had acknowledged to the attester that he is of full age and that he had voluntarily executed the said power of attorney.

[34] In the authentication of the impugned PA, PW1 did not certify that the first plaintiff had signed the impugned PA before him. There is no certification that PW1 either had personal knowledge that the signature is that of the first plaintiff or that PW1 had relied on information given to him by a reliable and trustworthy person that the signature was that of the first plaintiff. There is also no certification that the first plaintiff had acknowledged to him that the first plaintiff was of full age. All that PW1 had attested or certified was that first plaintiff had “personally appeared before him, “this day and acknowledged execution of the foregoing as his/her free and voluntary act and deed”. This has deviated too far from the prescribed wordings in Form I. F

[35] In respect of the authentication of the impugned PA, PW1 who had attested it as a notary public, had testified under oath that he was aware that it was mandatory for a power of attorney to be used in Malaysia to follow the prescribed form of authentication. (See: NOP (vol. 1) p. 33) G

ML Are you aware that it's mandatory for a power of attorney used in Malaysia to follow that form of authentication in the First Schedule of the Act? Are you aware? H

I

A Wong I am aware, but I don't know the law. I am, I don't specialise in preparing.

[36] PW1 also testified during trial that if the PA was to be used in Malaysia, he would have followed the form in the Act. (See: NOP (vol. 1) p. 36)

B ML Ok. Because if it was supposed to have been used in Malaysia, you would have followed the form provided in our 1949 Act, correct?

Wong I, correct, I agree.

C [37] This view was fortified in re-examination when PW1 testified that he would have attested the impugned PA with his capacity as advocate and solicitor rather than as notary public if he knew the impugned PA was to be used in Malaysia because "we have to comply with the Act." (See: NOP (vol. 1) p. 50)

D MC So why do you say that then Mr Wong that if a document to be used in Malaysia, you would have attested it in your capacity as advocate and solicitor rather than as notary public? Why do you say that?

E Wong Because in Malaysia we have the Powers of Attorney Act. We have to comply with the act, you know.

MC No –

Wong If things are to be done in Malaysia.

F [38] Not only that, PW1 had also acknowledged that the authentication form in the impugned PA was different from the prescribed form in the Act. (See: NOP (vol. 1) p. 11)

G KKC So, Mr Wong, you testified earlier that you are familiar with the provisions of the Powers of Attorney Act. Would you agree with me that the wordings of this attestation clause is (*sic*) not the same as that is required or prescribed under the Powers of Attorney Act? Or you prefer for me to share with you the Schedule 1?

Wong Yes, it's different, looks different.

KKC It's different, right?

Wong Yes.

H [39] When asked by the defendants' counsel during trial, PW1 agreed that the authentication form in the impugned PA did not state the details he had averred/certified in his statutory declaration dated 26 August 2021. (See: NOP (vol. 1) pp. 37 & 38)

I ML Now, we will find that you have certified. You see paragraph 2, you say here, "I hereby certify" these three things which you say, yes? These are the three things, Mr Wong, that are missing from page 9 of the disputed power of attorney. Would you agree?

Wong Yes.

A

ML So you are affirming this statutory declaration in August 2021 about 77 months after the disputed power of attorney was said to be notarised in 5 March 2015, correct?

Wong Can you repeat the question?

B

ML What you have said in paragraph 2 of your statutory declaration

—

Wong Yes.

[40] The plaintiffs in their submission postulated that although there was deviation from the attestation clause set out in Form I, there is no law to say that such deviation will render the present attestation clause somehow invalid. Instead, s. 62 of the Interpretation Act 1967 expressly allows for deviations from forms so long as “the deviation has no substantial effect and is not calculated to mislead”. The plaintiffs further argued that the deviation has no substantial effect as all of the particulars required in the attestation clause of Form I were there.

C

D

[41] The plaintiffs heavily relied on the judgment of *KHK Development Sdn Bhd v. Majlis Perbandaran Padawan* [2021] 1 LNS 99; [2021] MLJU 97 to support the premise that: “the legal effect of a power of attorney is derived from two distinct source, which are the Power of Attorney Act 1949 and the Contracts Act 1950”. In other words, according to the plaintiffs, even if the impugned PA is not valid under the Act, it is still valid under the Contracts Act 1950.

E

[42] However, as mentioned earlier, I find that the impugned PA has deviated substantially from the prescribed wordings in Form I. Moreover, I find the plaintiff’s reliance on *KHK Development Sdn Bhd (supra)* flaws due to several reasons. Firstly, *KHK Development Sdn Bhd (supra)* is a decision of the High Court of Kuching where the Act does not apply. It is apt to note the Act only applies to all states in Peninsular Malaysia.

F

[43] Secondly, the PA in *KHK Development Sdn Bhd (supra)* was not invalid for want of proper authentication. Rather, as the PA ceased to be effective pursuant to s. 112(3) of Sarawak Land Code, the Sarawak land authorities refused to carry forward the PA to the new subdivided titles by reason of the expiry or surrender of the lease. Hence, it was in that context that the PA in *KHK Development Sdn Bhd (supra)* was held to be a valid contract of agency which entitled the plaintiff to register a fresh PA *vis-à-vis* the subdivided titles. This issue does not arise in the present case and should have no bearing on this action.

G

H

[44] Besides, even if one is to take the plaintiff’s argument (relying on s. 62 of the Interpretation Act 1967) at its height, one must be mindful that s. 62 of the Interpretation Act 1967 only allows for deviations from any forms so long as the deviation has no substantial effect. From the comparison

I

- A earlier, it is clear that the attestation of the impugned PA had substantially deviated from Form I because most, if not all, of the key components of the attestation stated in Form I have been missing in the attestation of the impugned PA. It is thus my finding that s. 62 cannot shield the impugned PA from the fate of being null and void in view that the attestation clause
B contained therein has deviated substantially from Form I.

No Consideration

- [45] To add on, it is also the submission of the defendants that the only way the impugned PA could exclude the first plaintiff's rights over the property is if the impugned PA is an irrevocable power coupled with interest in the
C property, or an assignment of rights in the property, from first plaintiff to the second plaintiff. To this, I agree.

[46] For there to be a power coupled with interest, the power must be given:

- D (i) for sufficient consideration; and
(ii) for the purpose of securing some benefit to the donee, which must be expressly provided in the instrument.

- [47] The Court of Appeal in the case of *Sidambaram Torosamy v. Lok Bee Yeong* [2018] 3 CLJ 599; [2017] 4 MLJ 570 had delved into a lengthy
E discussion on the principle of power of attorney coupled with interest. Hamid Sultan JCA held that:

- [19] *A power of attorney coupled with interest to the donee will normally be referred to as irrevocable power of attorney to at least give effect to the intention of the parties which may be expressed or implied within the four corners of the terms of the power of attorney itself.* Learned authors, Berna Collier and Shannon Lindsay on Power of Attorney in Australia and New Zealand on irrevocable power of attorney had this to say:
F

- The principle that an authority coupled with an interest is irrevocable except with the donee's consent has been recognised for centuries. A good definition of an irrevocable power coupled with an interest may be found in the case of *Clerk v. Laurie* [1857] 2 H&N 199; 157 ER 83:
G

- What is meant by an authority coupled with an interest being irrevocable is this – that where an agreement is entered into on a sufficient consideration, whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable.
H (emphasis added)

- [48] On a plain reading of the impugned PA, this court find that the
I impugned PA is again invalid because despite it is an irrevocable (as per paras. G & H of the impugned PA) power coupled with interest of the property, there is no mention of the consideration at all.

[49] The impugned PA does not state anything to indicate the consideration based on which it was given, let alone stating anything to suggest that it was given:

(i) in consideration that (as alleged) the second plaintiff advanced USD17 million to the first plaintiff; and

(ii) as security for the moneys so advanced.

[50] This is contrary to the plaintiffs' pleaded case. The pleaded claim is that the second plaintiff had advanced USD17 million to the first plaintiff and that this was the "consideration" in exchange for the first plaintiff giving him the impugned PA. The impugned PA is, however, totally silent on this. Beside such drastic silence in the impugned PA which would render the impugned PA null and void, there was also no solid evidence to establish this.

[51] In fact, during trial, the second plaintiff himself had agreed that there was no evidence in the trial bundles to show his personal loans of USD17 million to the first plaintiff. (See: NOP (vol. 1) p. 447)

[52] Ultimately, the source of funds tendered was from Glammarine Offshore (L) Ltd ("Glanmarine"); not the second plaintiff, as testified and established during cross examination. (See: NOP (vol. 1) p. 451)

ML But as you have seen last Friday on 7th of October Mr Manoj a lot of these documents show monies being remitted from Glammarine Offshore Labuan Ltd to various entities including Ali for a stated purpose. Correct?

Manoj Correct.

ML In fact you had also included a variety of documents which shows money being paid by International Safe Oils to Glammarine Offshore. These were the credit transaction advice. You remember those?

Manoj Yes.

ML Yes, ok. I'm not going through the documents again. I will not put you through that. We've gone through it already, ok?

Manoj Alright.

ML *Now it was established on the 07/10/2022 that none of the documents state the monies were remitted as personal loans from you to Ali. Correct?*

Manoj Correct.

ML *Or the monies if at all were remitted from Glammarine Offshore Labuan Ltd, the company.*

Yes?

- A Manoj *Yes, correct.*
 ML *And not you. Correct?*
 Manoj *Correct.*

(emphasis added)

- B [53] On top of that, in the payment advice so tendered, the purpose of such payments had expressly been stated as “refund of disbursement”, “consultancy fee”, or “management fee” and not loan from the second plaintiff to the first plaintiff (encl. 184, pp. 10 to 88).

- C [54] The second plaintiff then rebutted by arguing that he is the *de facto* owner of Glammarine. However, company search conducted by the defendants on Glammarine showed that one Kiran is the owner and not the second plaintiff (encl. 290, pp. 3 to 9). The second plaintiff has also failed to adduce any solid evidence to support his claim that he is the *de facto* owner of Glammarine.

- D [55] Therefore, with the absence of any evidence to support that the sum of money was loaned from the second plaintiff to the first plaintiff, the second plaintiff has failed miserably to establish any consideration for the impugned PA. Since the impugned PA has never mentioned any consideration, it is obvious that it is void for lack of consideration. The failure of the second plaintiff to establish or prove the alleged USD17 million so loaned by second plaintiff to the first plaintiff further sealed the fate of the impugned PA as invalid and void.

- F [56] Also, I am in full agreement with the defendants that by virtue of s. 92 of the Evidence Act 1950, the extrinsic/oral evidence sought to be introduced by the second plaintiff is inadmissible to prove that the impugned PA was given for consideration and as security for moneys advanced by him to the first plaintiff.

- G [57] As the nature and extent of all the powers and terms are contained in the impugned PA, s. 92 of the Evidence Act bars any oral evidence to contradict, vary, add to, or subtract from the express terms of the written document (See: *He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal* [2020] 7 CLJ 271).

- H [58] The rationale for the rejection of parol evidence rule in this case is simply that if oral evidence is admissible to vary or change such legally required document, then the whole fabric of commercial life would fall apart.

- I [59] I can do no better than to be guided by the judgment of Chang Min Tat FJ at 233 C-G (left) in *Tindok Besar Estate Sdn Bhd v. Tinjar Co* [1979] 1 LNS 119; [1979] 2 MLJ 229: “... it means where the terms of a contract have been reduced to writing, as in this particular agreement they had been,

the contract could only be proved by the document itself, and it is not open to the respondent to seek to introduce and the judge to admit evidence that would, *inter alia*, add new terms to it.”

A

[60] Applying the principle to our case herein, any factual context or factual matrix is irrelevant to determine the purpose of the impugned PA. The second plaintiff’s claim was pleaded squarely on the basis that the impugned PA was given as consideration and as security for moneys advanced by the second plaintiff to the first plaintiff. The fundamental question is whether the language of the impugned PA supports that contention. As discussed earlier, a plain reading of the impugned PA and the evidence say otherwise. Hence, the second plaintiff’s claim is unsustainable.

B

C

[61] On all counts, the impugned PA is null and void due to the defeats and lacks mentioned earlier. On these two defects alone, it is clear to me that the plaintiffs’ case, on the balance of probabilities, must be dismissed. However, for the sake of completeness, I shall now discuss the other aspects of this action.

D

The Signing Date

[62] Critically, PW7 (namely the second plaintiff himself) agreed in cross-examination that the impugned PA could not be signed in March 2015 (despite the impugned PA was dated 17 March 2015) as the charge was only created and signed in June 2015, and the charge was only registered in October 2015. (See: NOP (vol. 1), p. 496)

E

ML Can you just scroll down a little bit. I want to show you that this was signed by Ali Reza. Can you see his name? Yes, as the registered owner of the property. Scroll down please. That’s his signature. And it 4 was given in favour of, scroll down. Wira Bangi Sdn Bhd. Can you see that?

F

Manoj I can.

ML Ok. Can you scroll down, please? Sorry can you just scroll up? One more. Yes, ok. Can you see the date, June 2015? That’s the date in which this document was created. Ali Reza signs it on the 19/06/2015 and if you look at the bottom, the solicitor on behalf of Wira Bangi, can you scroll down same page? He also signs it; Mr Ben Lee Kam Foo also signs it on 19/06/2015. Did you see that?

G

H

Manoj Yes, I do.

ML Ok. Now with that in mind, Mr Manoj, we can exit this document, please. With that in mind, the Power of Attorney could not have been signed and given to you in March 2015 because No.1, Wira Bangi’s charge which you pointed out to Ali a day before on the 16th of March, was only created and signed in June 2015. Agree or disagree?

I

A Manoj Agree.

ML *Power of Attorney could not be signed in March 2015 because Wira Bangi's charge was only registered on Ali's title in October 2015. Agreed?*

Manoj *Agreed.* (emphasis added)

B [63] Contrary to the second plaintiff's case and by his own admission, it was impossible for the impugned PA to be signed and given on 17 March 2015. This has casted doubt on the authenticity of the impugned PA. To confirm this, I must also consider the testimony of the other witnesses.

C [64] Based on the totality of evidence on whether the impugned PA was signed on 17 March 2015, this court find that the testimonies of PW1 and PW6 are unhelpful and equivocal. During trial, PW1 candidly testified that a notarial act is authenticated by his signature, official seal, and date which certifies due execution in the presence of a notary public. (See: NOP (vol. 1) pp. 19 & 20) PW1 also testified that dating a document is a vital part of notarising a document. (See: NOP (vol. 1) p. 29)

D [65] However, as premised by the defendants, PW1's evidence seems to suggest that he did not affix the date stamp of "17 March 2015" just above where he signed on the execution page of the impugned PA. In PW1's witness statement, he had methodically outlined what he did step-by-step but did not say he placed the date stamp. (See PW1's witness statement (encl. 310), para. 5 of p. 2)

E Q2 Please explain to the Court the event leading to the execution of the PA by Ali?

F A ...

On the final page of the PA (see page 9 of Enclosure 164), I signed on the line just above the designation of "Notary Public". I then placed my notary public stamp on the bottom left of the page, followed by my notary public seal in the middle, and finally my notary public chop (*sic*) with my relevant details on the bottom right.

G [66] Upon further queries during cross-examination, PW1 testified that he had shredded and disposed of the records contained in the notarial register after five years. (See: NOP (vol. 1) p. 22)

H [67] Later, PW1 also admitted that without the notarial register, the court cannot verify what actually happened regarding the impugned PA. (See: NOP (vol. 1), p. 23). He also admitted that his only recollection of what documents he had notarised, and whether the impugned PA was signed on 17 March 2015, was purely based on the signature and initials appearing in the disputed document. (See: NOP (vol. 1), pp. 45 & 46)

I [68] Meanwhile, PW6 candidly conceded several vital facts in cross-examination which diminish the probative value of his evidence about he allegedly saw the first plaintiff signed the impugned PA on 17 March

2015. PW6 testified that he was testifying about events that occurred about years ago and he only recalled the event but not the details. In fact, PW6 candidly testified that he saw the first plaintiff signed many letters but do not know what he had signed at that particular time. (See: NOP (vol. 1) p. 242)

[69] Therefore, there was no concrete proof to show that the impugned PA was signed by the first plaintiff on 17 March 2015. This couples with the admission by PW7 (the second plaintiff) that the impugned PA could not be executed in March has casted more doubt if not vitiating facts to the validity of the impugned PA.

[70] Over and above, I also have to agree with the defendants that PW1's testimony in cross-examination erodes the authenticity of the impugned PA for few reasons. Firstly, PW1 cannot confirm or ascertain whether the first plaintiff executed the impugned PA on 17 March 2015 and admitted that the first plaintiff did not initial on each page of the impugned PA. (See: NOP, (vol. 1) p. 48)

[71] Secondly, PW1 is neither certain nor sure whether the contents of the impugned PA at pp. 7 and 8 were part of the document he purportedly authenticated at p. 9. (See: NOP (vol. 1) p. 51)

[72] Next, it is the defendants' case that the first plaintiff has never granted the impugned PA. This is consistent with the statutory declaration signed by the first plaintiff on 14 September 2016 ("SD") stating, "... I have never granted a Power of Attorney or given any authority regarding the abovementioned property or with regard to any of my assets to Manoj Singh and/or Kiran. I further declare that any claims made by Manoj Singh and/ or Kiran are untrue and false ..." (encl. 164 p. 103).

[73] Thus, through the SD, the first plaintiff declared and averred that he had never given nor granted any power of attorney to the second plaintiff. This SD by the first plaintiff was witnessed by the fourth defendant.

[74] Interestingly, as a matter of fact, the second plaintiff (PW7) in the course of cross-examination conceded that this SD was signed by the first plaintiff. (See: NOP (vol. 2), p. 10)

TKT Ok, alright. *Are you also contending that your allegation here that Dato Ali Reza did not sign the statutory declarations before Dato' Syed Alwi?*

Manoj *He did sign.*

TKT *He did sign the statutory declarations, is it?*

Manoj *Correct.*

TKT *So you have confirmed that the statutory declarations were signed by Dato Ali Reza, that's your position?*

Manoj *Yes, he did sign.* (emphasis added)

A (See NOP (vol. 2), p. 9)

TKT No, agree or disagree? Did he sign the statutory declarations, agree or disagree? Did Dato' Ali Reza sign the statutory declarations? Because I believe that when you were reading through (b), you did say that Dato' Ali Reza did execute the statutory declarations. Then after I shown you the statutory declarations, which are in question, now I'm posing back the same question, do you agree or disagree?

B

Manoj *I agree.*

TKT *Agree it was signed by him, correct?*

C

Manoj *Yes.* (emphasis added)

[75] Hence, based on the testimonies above, and the fact that the second plaintiff had never challenged the validity of the SD, the only inference here is that the SD is not a fabricated and concocted document as alleged by the second plaintiff in the SOC.

D

[76] Further, as mentioned earlier, it is important to note that in this SD the first plaintiff has categorically declared and averred that he did not grant any power of attorney to the second plaintiff. (See: NOP (vol. 2), p. 36)

E

TKT So, in those both scores, will you agree with me on the 14/09/2016, Dato' Syed Alwi secured a confirmation in writing from Dato' Ali Reza that he did not give you a PA, and he did not sign the letter confirming there was a loan from your wife, Kiran? This is a confirmation in writing, agree?

Manoj As per his declaration, yes.

F

[77] Therefore, it is crystal clear from the SD (which the second plaintiff agreed that it was signed by the first plaintiff) that the impugned PA was never given by the first plaintiff to the second plaintiff.

G

[78] All the above cast doubt on the authenticity of the impugned PA. The burden is on the second plaintiff to prove the validity of the impugned PA. The second plaintiff has failed to do so. Thus, the plaintiff has failed to establish his claim on the balance of probabilities.

[79] The next issue to be scrutinised is whether the second plaintiff could commence this action in the first plaintiff's name and in his own name.

H

[80] It is elementary that a power of attorney must be construed strictly in express terms, or by necessary implication, within the four corners of the document by which any power is conferred. The apex court in *Subramania Pillay v. Sundarammal* [1968] 1 LNS 148; [1968] 2 MLJ 115 approved the principles stated by the Privy Council in *Bryant, Powis and Bryant La Banque du Peuple* [1893] AC 170 at p. 116 (para F to H), where Suffian FJ held:

I

... powers of attorney are to be construed strictly – that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, *it is necessary to shew that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication.* (emphasis added)

A

B

[81] The discussion earlier completes the entire picture about the status of the impugned PA in all aspects: that the impugned PA is null and void. As such, the second plaintiff has never been appointed the attorney of the first plaintiff and he thus has no legal authorities to file this action on behalf of the first plaintiff. The question now remains as to whether the second plaintiff could commence this action in his own name.

C

[82] During cross-examination, PW7 initially testified that, *inter alia*, under the impugned PA, he must act in the name of the first plaintiff, and he cannot do things for his own benefit. (See: NOP (vol. 1) pp. 485 & 486)

ML Yes, so if you look at page 6 of the Power of Attorney, it says “Ali Reza do hereby, name, designate, constitute and appoint yourself, Mr Manoj Singh, as my true and lawful attorney in my name, place and stead to do either, any or all of the following. Do you see that?”

D

Manoj Yes, I do.

E

ML It does not say, you can do things for your own benefit.

Manoj Agreed, ok.

...

ML Agree. So if you act under this Power of Attorney, you must act in Ali’s name. Agree?

F

Manoj In Ali’s name.

ML That’s what the first two paragraphs say. Ok, agreed.

Manoj That’s what it says here. Like you said.

G

...

ML Correct? I ask you the question again. The scope and extent of what Ali authorised you to do will depend on the wordings of the Power of Attorney. Agreed?

H

Manoj Agreed.

[83] Relevantly, when pressed in cross-examination about the basis upon which the second plaintiff brought the action in his own name, PW7 testified that he commenced this suit because the first plaintiff owed him money. (See: NOP (vol. 1) p. 489). This has totally contradicted the second plaintiff’s pleaded case that he commenced the action in his own name based on the impugned PA.

I

A [84] Interestingly, during trial, PW7 was asked for whom he was seeking to recover the property for. It emerged that PW7 did not know whether the recovery of the property through this action was for himself or for the first plaintiff. (See: NOP (vol. 1) pp. 488 & 489)

B ML No, no, no, are you seeking to recover the property for yourself?
Yes, no or I don't know?

Manoj Am I to recover the property for myself while the PA was given to me. So recover it for myself. I don't know.

ML You don't know? Ok.

C Manoj I believe I don't know.

[85] It begs the question on what is the whole point of the action apart from being a claim filed by a busybody. I am with the defendants on this point: this claim is frivolous and illusory.

D [86] Concerning the alleged personal loans owed by the first plaintiff (as alleged by the second plaintiff earlier), the second plaintiff conceded that it was a matter between him and the first plaintiff, yet no legal action has been filed to recover the alleged unpaid loans. (See: NOP (vol. 1) p. 555)

E ML Now any dispute regarding your alleged personal loan is a matter between Ali and you, agree?

Manoj Agree.

ML And you have also told us yesterday, I need a confirmation from you again, there is no evidence in the trial bundles that you have filed any Court action to recover this so-called personal loan between you and Ali, correct?

F

Manoj Correct.

G [87] According to the defendants, in view that PW7 was improperly named as the second plaintiff in the action (because he has no personal rights in the property), he has no *locus standi* to commence this action, and it is a clear abuse of process. The defendants cited an earlier High Court case of *Wee Tiang Kheng & Ors v. Ngun Nii Soon & Ors* [1989] 1 CLJ 267; [1989] 2 CLJ (Rep) 639; [1989] 1 MLJ 252 to support their proposition. The defendants further submitted that the second plaintiff does not have *locus standi* to maintain this action in his personal capacity against the defendants since the second plaintiff did not have any proprietary right on the said property. For this, they relied on the judgment in *Hassnar MP Ebrahim v. Sulaiman Pong & Ors* [2017] 1 LNS 1167; [2018] 1 MLJ 346.

H [88] I find the judgment in *Wee Tiang Peck v. Teoh Poh Tin* [1994] 1 LNS 154; [1995] 1 MLJ 446 instructive, where Idris Yusoff J held at p. 454 (paras. E-F):

I

A 'power of attorney' is defined as a formal instrument by which one person empowers another to represent him or act in his stead for certain purposes, see *Jowitt's Dictionary of English Law* (2nd Ed). *Such instrument must be strictly construed according to well recognized rules.* Once a power of attorney is created, the relationship of principal and agent arises between the donor and the donee of the power. In no case could the authority of the donee exceed the power of the donor to act on his own behalf. In all cases, the donee of the power owes the donor duties of a fiduciary character, *eg*, to keep accounts of all transactions that transpired and must also be prepared to produce them to the donor at all times, to disclose any conflict of interest and not to receive any secret commission or bribe – see 1(2) *Halsbury's Laws of England* (4th Ed) at para 87. *If a person is acting under the power of attorney, he should as a general rule, act in the name of the donor of the power and likewise if he is authorized to sue on the donor's behalf, the action should be brought in the donor's name.* (emphasis added)

[89] Applying the above judgment to our case herein, if at all, the second plaintiff is commencing this action on behalf of the first plaintiff by virtue of the impugned PA, this action should be brought in the donor's name, that is first plaintiff's name. It does not give the second plaintiff the power to commence this action in his own name.

[90] The impugned PA therefore only gives the second plaintiff the authority to deal with the first plaintiff's assets and do not in any way whatsoever secure any personal benefit and rights of the second plaintiff over the property. To be able to sue in his own capacity, the second plaintiff must establish that he has personal benefit and rights over the property that he must secure. This, he has failed to do. Therefore, the commencement of this action is wrong on all counts.

SPA & Form 14A

[91] The second plaintiff had challenged the validity of the SPA and Form 14A that transferred the property to the first and second defendants. The second plaintiff has levelled four arguments regarding the authenticity of the SPA:

- (i) the propriety of the sale consideration of RM15 million;
- (ii) the formatting and pagination of the copy of the SPA suggest tampering of the pages with only the first and 16th page of the SPA carrying page numbers but not the pages in between;
- (iii) the third defendant (Kevin) acted for both the vendor (Ali) and the purchasers (the first and second defendant) in conflict of interests; and
- (iv) Ali did not sign the SPA on 23 March 2016 as he had left Malaysia on 22 January 2016.

A [92] I find that these allegations are bare accusation evidently. The main reason is that the second plaintiff had admitted, while testifying during trial, that the SPA is real. (See: NOP (vol. 1) p. 625)

B ML Ok. So, having showed you all those transactions, I went through no less than 40, about 40 events and 40 transactions referenced to documents, correspondence, Court documents, Court orders, cheques, stamp duty certificates, payment of stamp duty, RPGT, right? *This sale and purchase transaction for the sale of property from Ali to Chew and wife was as real as it was. Agree or disagree?* Based on the documents I just showed you.

C Manoj Yes, based on documents, yes, I agree. (emphasis added)

[93] The second plaintiff appeared discontent with the sale consideration for the property at RM15 million. However, he who asserts must prove. I find that the second plaintiff has failed to discharge his burden of proof to establish that the property was sold undervalue.

D [94] In fact, the second plaintiff himself readily testified in cross-examination that the inland revenue's market value for the property of RM15 million matched the purchase price of RM15 million stated in the SPA. (See: NOP (vol. 1) p. 612)

E Manoj Yes, I can.

ML Nilai pasaran is market value. As far as LHDN Malaysia was concerned the market value was RM15 million, which matched the purchase price of RM15 million.

Manoj Exactly.

F ML Which was stated in the SPA. Yes?

Manoj Yes.

G [95] On top of everything, there is no evidence in the trial bundles of any valuation report obtained by the second plaintiff to show what the market value of the property should be. Thus, his ambush on the SPA fails.

H [96] The second plaintiff also questioned the validity of Form 14A which effected the transfer of the property from the first plaintiff to the first and second defendants. Effectively, the second plaintiff alleged that in view that Form 14A was executed by the first plaintiff and witnessed and attested by the third defendant on 14 September 2016 outside Malaysia, it is in contravention of s. 211 of the NLC.

I [97] The second plaintiff also argued that the first plaintiff's signature in Form 14A is a forgery. However, it is significant to note that the first plaintiff himself is not disputing the fact that he signed Form 14A. The video recording determines this point conclusively (encl. 162).

[98] In this regard, relevant guidance can be gleaned from the case of *Wee Huay Fong v. Pentadbir Tanah, Klang & Anor* [2002] 6 CLJ 512; [2002] 3 MLJ 572, where Zulkefli J (as his Lordship then was) considered that the mischief of s. 211 was to prevent forgery. That is to say, if the person executing the instrument was in fact genuinely that particular person, even though the instrument was not attested as prescribed by law, there is no breach of s. 211 of the NLC and the instrument is not a void instrument, and once registered, it becomes indefeasible.

A

B

[99] Although *Wee Huay Fong* (*supra*) concerns primarily with Form 16A, I agree with the defendants that the ratio must apply by analogy to uphold the validity of Form 14A in this action.

C

[100] The first plaintiff could not testify during trial in view of his jail term in Iran. In place of this, the defendants tendered the video recording showing him executing the SPA and Form 14A. After scrutinising the video, this court is of the view that the allegation that Ali's signature in Form 14A was forged is baseless. Also, the plaintiff has not tendered any evidence other than mere allegation to establish that the signature was forged. No signature expert report, for instance, was tendered. Nor has any signature expert been called during trial. On the contrary, the video proves beyond any shadow of doubt that it was the first plaintiff who signed Form 14A. This was also admitted by PW7 during cross-examination. (See: NOP (vol. 1) p. 610].

D

E

[101] PW7 also confirmed that that the first plaintiff had signed Form 14A in the presence of the third defendant. (See: NOP (vol. 1) pp. 611 & 612)

ML And you can see, during the video that we played just now that Kevin had explained the nature of the document that Ali was going to sign, which was for the transfer of the property.

F

Manoj Correct.

ML That document was signed by Ali Reza on 14/09/2016 in Kevin's presence, and he signed it as the owner of the property, yes? That's what the Form 14A is about.

G

Manoj Correct.

ML By the Form 14A, Ali intended to sell the property to Chew and wife.

Manoj Correct, sir

H

ML Yes, yes. Now, based on the video recording that we just saw, Mr Manoj.

Manoj Yes.

ML Kevin saw Ali signed the Form 14A, correct?

I

Manoj Correct.

A ML Ali signed the Form 14A in Kevin's presence. Correct?

Manoj Yes, sir.

ML When Ali was signing copies of the Form 14A, you can remember, he signed two sets, Ali wished the best to Mr Chew and his family. You heard that, right?

B Manoj Yes, I did.

ML Yes, and he said they will have good days in that beautiful property. Those were his words.

Manoj Yes

C [102] At the end of the day, since the second plaintiff accepts that the first plaintiff had in fact signed Form 14A in the third defendant's presence, the mischief and purpose of s. 211 of the NLC have been fulfilled. Moreover, the transferor who had executed the form (Form 14A) never denied that he had executed the form (Form 14A) and had indeed confirmed *via* the video recording that he was happy to transfer the property. He had even wished the transferees (first and second defendants) the best. Accordingly, there is no breach of s. 211 of the NLC and Form 14 is therefore a valid instrument, and once registered it has become indefeasible under s. 340(1) of the NLC, in favour of the first and second defendant. Hence, the first and second defendants have the indefeasible title to the property.

Claim Of Conspiracy To Injure

F [103] According to the SOC, the second plaintiff has alleged that all of the defendants have conspired to injure the second plaintiff through unlawful means by carrying out the following purported unlawful acts, namely:

(i) first plaintiff did not execute the fourth defendant's PA in favour of fourth defendant; and

G (ii) first plaintiff did not sign the statutory declarations which were purported attested by fourth defendant.

[104] It is to be noted at the outset that for any claim under conspiracy, it must be strictly pleaded and each element of the tort must be fully particularised (See: *Repco (Malaysia) Sdn Bhd v. Tan Toh Fatt & Ors* [2012] 1 LNS 116; [2013] 7 MLJ 408).

H [105] His Lordship KN Segara JCA in *Renault SA v. Inokom Corporation Sdn Bhd & Anor* [2010] 5 CLJ 32; [2010] 5 MLJ 394 articulated that one must plead and state precisely the agreement between the defendants to conspire and the purpose or objects of the alleged conspiracy (See also: *Loh Chun Hoo v. Loh Chun Hoo & Ors* [2022] 1 LNS 25).

I

[106] It is the second plaintiff's burden to prove that the acts which were carried out by the defendants were unlawful and with the objective of injuring the second plaintiff's purported right and interest on the said property. (See: *Cubic Electronic Sdn Bhd (In Liquidator) v. MKC Corporate & Business Advisory Sdn Bhd & Another Appeal* [2016] 3 CLJ 676; [2016] 3 MLJ 797).

[107] It is important to note that the first plaintiff was not named as a co-conspirator together with the defendants and that first plaintiff did not testify at trial to substantiate the second plaintiff's allegations in the SOC. Nor has the second plaintiff produced any evidence to substantiate his accusation.

[108] The crux of the second plaintiff's pleaded case is that the fourth defendant together with the other defendants had unlawfully and/or fraudulently conspired to injure the second plaintiff by unlawful means in depriving the second plaintiff's rights to the property. However, he has not tendered any proof to establish this.

[109] It is an essential ingredient in an action of conspiracy to injure to prove that the wrongdoers have an intention to cause harm on the innocent party and the acts which were carried out by the defendants were unlawful (See: *Deepak Jaikishan Jaikishan Rewachand & Anor v. Infrared Sdn Bhd & Anor* [2013] 7 MLJ 437). As such, the burden is on the second plaintiff to also prove that there was an intention to injure by the fourth defendant together with the other defendants. Nevertheless, it is the finding of this court that the claim for conspiracy to defraud is not actionable for the second plaintiff had failed to prove the elements to a conspiracy claim for few reasons. Based on the extensive evidence presented before this court, the first plaintiff and the defendants had acted lawfully in the conveyancing transaction in effecting the transfer of the property to the first and second defendants in consideration of RM15 million.

[110] In addition, the third defendant had attended to the drafting, preparation and execution of the SPA and Form 14A for the sale of the property in good faith for the legitimate purpose of acting pursuant to, and in accordance with first plaintiff's instructions to sell the property to the first and second defendants. The fourth defendant, on the other hand, has been authorised as the attorney of the first plaintiff. All of them had performed their respective roles and duties with legitimate causes. Hence, there is no basis/evidence to support the accusation that the defendants had conspired to injure the second plaintiff.

[111] In any event, as second plaintiff did not have any security rights in the property, there was simply nothing to injure the second plaintiff.

A

B

C

D

E

F

G

H

I

A Conclusion

[112] In summary, due to the incompliance of the impugned PA with numerous requirements of the Act and decided cases, the impugned PA is invalid. This is further strengthened by the SD witnessed by the fourth defendant. The second plaintiff, therefore, has no authority to initiate this action on behalf of the first plaintiff. Since the second plaintiff's legal claim is founded on his role as a donee pursuant to the impugned PA, his claims are unsustainable.

B

[113] In similar veins, since the second plaintiff could not establish his personal rights over the property, his claim in this action in his personal capacity is again, without basis.

C

[114] Besides, the absence of the first plaintiff, makes it not feasible to establish the elements of conspiracy as claimed by the second plaintiff. The second plaintiff has also failed to establish, provide and prove the particulars and elements of this conspiracy to injure.

D

[115] Thence, the plaintiffs' claim is hereby dismissed with cost of RM65,000 to be paid by the plaintiffs to the first and second defendant, and cost of RM60,000 to the third and fourth defendants respectively. All costs are subject to allocatur.

E

F

G

H

I