

IN THE COURT OF APPEAL MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. W-02(NCC)(W)-37-01/2022

BETWEEN

1. LIM BENG GUAN

2. AGATHISFOUR SDN BHD

APPELLANTS

AND

CHEN KHAI VOON

RESPONDENT

CORAM

RAVINTHRAN A/L N. PARAMAGURU, JCA

MOHAMED ZAINI BIN MAZLAN, JCA

CHOO KAH SING, JCA

BROAD GROUNDS

- [1]** This appeal arises from the High Court's decision following a trial in which the respondent's claim against the first appellant was upheld, while the counterclaim by both appellants was dismissed. There were essentially two key issues for determination in the High Court:

- (i) Whether an oral agreement existed between the first appellant and the respondent on 24 July 2018, to acquire a block of shares in the Paparich Group equally ("the 50:50 oral agreement"); and
- (ii) Whether a subsequent oral agreement was reached on 7 January 2019, between the first appellant and the respondent for the respondent to buy out both appellants' interest in the Paparich Group for RM75 million ("the January 2019 oral agreement").

[2] The respondent's claim was based on the 50:50 oral agreement, whereas the appellants' claims were based on the January 2019 oral agreement. The High Court ruled in favour of the respondent and held that the parties had entered into the 50:50 oral agreement.

[3] The respondent owned 50% of Paparich Group Sdn Bhd ("PGSB"). Dato' Tan Theng Liang, also known as Dato' Rich, owned the other 50% of the shares and was the founder of the Paparich restaurant chain. PGSB is an investment holding company that owns shares in several companies collectively known as the Paparich Group, including Paparich Malaysia Sdn Bhd ("PMSB"). The first appellant and Danny Choong are directors and shareholders of the second appellant company, which holds a 30% stake in PMSB.

[4] The relationship between the respondent and Dato' Rich soured around 2017, resulting in multiple lawsuits between

them. The first appellant facilitated a settlement between the two, which involved the sale of Dato' Rich's 50% shares in PGSB and other companies in the Paparich Group. This led to the creation of four written agreements, the first being a Letter of Agreement dated July 24, 2018, in which it was agreed in principle that the first appellant would purchase Dato' Rich's shares in PGSB. The disagreement between the appellants and the respondent pertains to the execution of this agreement.

[5] On 24 July 2018, the first appellant and the respondent met at the first appellant's office. The respondent argued that they had orally agreed to acquire Dato' Rich's shares on a 50:50 basis and would contribute equally to the costs. The first appellant agreed that they would use a special purpose company called Adventure Driven Sdn Bhd ("ADSB") to acquire Dato' Rich's shares and that the entire business of PGSB and its subsidiaries would be restructured after the deal with Dato' Rich was completed. Both the first appellant and the respondent were directors and shareholders of ADSB.

[6] The settlement efforts were managed by the first appellant, who approached OCBC Bank for financing. The bank approved a financing facility of RM21 million to partly fund the acquisition of PGSB shares. However, the bank imposed several additional conditions on the respondent, including the requirement to park one additional PGSB share in his name under ADSB, open a dividend account with the bank to deposit all dividends received from PGSB, place a cash deposit of

RM1 million with the bank, pledge an additional 173,480 shares in PGSB to the bank, and provide a joint and several guarantee.

[7] In contrast, the appellants claimed that the first appellant had a change of heart and that the 50:50 oral agreement was replaced by the oral agreement reached on 7 January 2019. The first appellant alleged that the respondent had agreed to buy them out entirely from the Paparich Group for RM75 million, which was to include the purchase of the second appellant's 30% shares in PMSB and the first appellant's single share in ADSB, with the consideration to be paid through an asset swap. Conversely, the respondent contended that the first appellant had no longer shown interest in purchasing Dato' Rich's shares and instead wanted the respondent to buy the second appellant's 30% shares in PMSB. The respondent maintained that while he listened to the first appellant's exit strategy involving shares and asset swaps, no agreement was finalized.

[8] In summary, the respondent's claim was based on the 50:50 oral agreement, while the appellants' counterclaim rested on the January 2019 oral agreement. The High Court chose to first consider the appellants' claim regarding the January 2019 oral agreement, as it would take precedence over the respondent's claim if proven valid. The trial lasted for seven days, during which 13 witnesses testified: two for the respondent and the rest for the appellants. In ruling in favour of the respondent, the High Court ordered as follows:

- (i) The first appellant is required to reimburse the respondent 50% of the costs for the acquisition under the 50:50 oral agreement, amounting to RM8,051,813.28; and
- (ii) The first appellant must return the sum of RM1,718,674.00 to the respondent, which represents the proceeds from the respondent's share relating to the sale of an apartment at the St. Regis development, as the first appellant had utilized this amount to make payments for Dato' Rich's shares.

[9] In presenting their appeal, the appellants presented their arguments comprehensively. The first issue raised by the appellants was regarding the High Court's approach in determining whether the oral agreement from January 2019 had been established. The appellants argued that the High Court made an error by asserting that the 50:50 oral agreement would be established if the appellants failed to prove the existence of the January 2019 oral agreement. It was submitted that this perspective overlooks the fundamental rule that the burden of proof still lies with the respondent to demonstrate the existence of the 50:50 oral agreement.

[10] In contesting the findings of fact by the High Court, the appellants examined in detail the evidence presented by the witnesses and the documents submitted during the trial. We will not elaborate on all the arguments raised in this summary. In essence, the appellants emphasized several witness

testimonies, particularly the numerous WhatsApp messages exchanged between the parties. They contended that the High Court's analysis of the evidence was fundamentally flawed, leading to an erroneous conclusion that favoured the respondent.

[11] We are of the view that the High Court correctly approached the issue by first determining whether the January 2019 oral agreement existed. This approach was consistent with the arguments presented by both the appellants' and the respondent's counsel in the High Court, as evidenced by the written submissions and notes from the proceedings. Moreover, this reasoning was logical, as proving the existence of the January 2019 oral agreement would mean that the 50:50 oral agreement had been superseded. Regarding the assertion that the High Court merely concluded the existence of the 50:50 oral agreement upon ruling that the January 2019 oral agreement did not exist, it is clear that the High Court did not take a simplistic view. It was evident that the court had carefully analysed the evidence before concluding that the terms of the agreement were based on the 50:50 oral agreement.

[12] The findings of the High Court were primarily based on factual evidence. The High Court also made assessments concerning the credibility of witnesses, particularly those of the 1st appellant and the respondent. An appellate court lacks the advantage of a trial judge, who can observe the demeanour of witnesses first-hand. Provided that the High Court's factual

conclusions are not contrary to common sense, they should not be disturbed, as established in *Ng Hoo Kui v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67 FC. The apex court in that case also ruled that the trial judge should be granted a margin of appreciation when the appellate court reviews the treatment of evidence, and the appellate court should not reverse the trial court's factual findings simply because it disagrees with the conclusions drawn regarding which party to believe.

[13] In its judgment, specifically in paragraphs 42-47, the High Court outlined the legal principles for determining the existence of an oral agreement. The court was mindful of several principles that needed to be considered before arriving at its findings, which include the following:

- (i) Whether there was sufficient evidence to establish the existence of a binding agreement, as opposed to remaining in the negotiation stage; and
- (ii) When assessing conflicting evidence regarding oral agreements presented by the parties, the court must consider the credibility and reliability of the witnesses, and evaluate their oral testimonies against contemporaneous documents and the behaviour of the witnesses.

[14] We are of the view that the High Court's analysis of the evidence aligns with the principles outlined, and we see no

reason to challenge its factual findings, including the reliefs granted. Consequently, we dismiss the appeal with costs of RM50,000.

Dated: 21 January 2025.

- Sgd -
(MOHAMED ZAINI MAZLAN)
JUDGE
COURT OF APPEAL, MALAYSIA

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