

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
BAHAGIAN SIVIL
[GUAMAN SIVIL NO: WA-22NCVC-802-12/2020]**

ANTARA

TAN LAY CHONG

(NO. K/P: 541108-10-6379)

[BERDAGANG DI BAWAH NAMA DAN GAYA

PROPSTAR REALTY (NO. PENDAFTARAN.: E (3) 1591)]

... PLAINTIF

DAN

LAI LEE FONG

(NO K/P: 790228-14-5142)

... DEFENDAN

JUDGMENT

Introduction

- [1]** Both the Plaintiff's claim and the Defendant's counterclaim is related to the ownership of an estate agent firm by the name of Propstar Realty ("the Firm") which was a registered estate agent firm under the Lembaga Penilai, Penaksir, Ejen harta Tanah dan Pengurus Tanah ("the Board") . The Firm conducted its business at the address K-3A-10, No. 2, Jalan Solaris, Solaris Mont Kiara, 50480, Kuala Lumpur.
- [2]** The case proceeded for a full trial with both sides relying on oral testimony of witnesses as well as documents contained in the Bundle of Documents. The Plaintiff called 4 witnesses SP1 to SP4 and the Defendant also called 4 witnesses SD1 to SD4.

The brief facts

- [3] Both the Plaintiff and the Defendant are individuals. The Plaintiff is a registered estate agent under the Act 242 since 1986. The Defendant is a Real Estate Negotiator.
- [4] The firm was set up for doing real estate business for individuals and corporations. The Plaintiff was represented in the firm by his daughter. 2 other persons involved in the business were the Defendant and Chea Khoon Siew who is now deceased.
- [5] The Plaintiff's claim against the Defendant is basically for converting the Firm for her own use by exercising full administrative and business control over the Firm and by doing so sidelining the Plaintiff. The Plaintiff contends that the Defendant denied him access to the Firm's premises and business.
- [6] The Defendant however contends that she is a co-founder and co-proprietor of the firm and therefore entitled to all the rights of the firm as a co-owner.

Ownership of the firm according to law

- [7] In the Court's view the decision of the ownership of the firm depended on the provisions of Valuers, Appraisers, Estate Agents and Property Managers Act 1981 ("Act 242") ("the Act"). The Act provides amongst others for the registration of estate agent and outlines the role of an estate agent.
- [8] Section 22 B of the Act states as follows:
 - (1) **Subject to the provisions of this Act, a registered estate agent who has been issued with an authority to practise by the Board shall be entitled to practise his profession and shall be authorized to undertake estate agency practice.**

- [9] This provision clearly stipulates that only a registered estate agent who has been issued an authority by the Board is entitled to practise the profession. The undisputed fact in this case is that only the Plaintiff is the registered estate agent. The Defendant is not registered as an estate agent but has been designated as a Negotiator.
- [10] Section 22B (1A) states **“A person undertakes estate agency practice if he acts as an agent, or holds himself out to the public or to any individual or firm as ready to act as an agent, for a commission, fee, reward or other consideration-**
- (a) in respect of any sale or other disposal of land and buildings and of any interest therein;**
 - (b) in respect of any purchase or other acquisition of land and buildings and of any interest therein;**
 - (c) in respect of any leasing or letting of land and buildings and of any interest therein;**
 - (d) in making known of the availability of land, building, or any interest therein for such sale or disposal, purchase or acquisition, or leasing or letting referred to in paragraph (a), (b) or (c), as the case may be; and**
 - (e) in respect of any tenancy administration including rental collection, payment of outgoings, arrangement for minor repairs and handing over and taking over the possession of a property of any land and buildings and of any interest therein.**
- [11] The above provision requires the person registered as an estate agent in carrying out the profession of estate agent either acts as the agent or holds himself out as an agent when dealing with the clients.

- [12] In this case it is the evidence and admission by the Plaintiff himself that he left the day to day business to his daughter and he supervised the running of the Firm remotely. In fact the evidence showed that the Plaintiff hardly stepped his foot at the premise of the Firm. The Plaintiff also admitted that he left the business of meeting the clients to his daughter and other persons at the Firm.
- [13] The Defendant who is not a registered estate agent on the other hand admitted to meeting the clients herself and held herself out as an agent. In fact the Defendant advertised herself in business magazines as to be the owner of the Firm
- [14] Section 22 C imposes the following restrictions on carrying out the duties as an estate agent:
- (1) No person shall unless he is a registered estate agent and has been issued with an authority to practise under section 16-**
 - (a) practise or carry on business or take up employment under any name, style or title containing the words "Estate Agent", "House Agent", "Property Agent", "Land Agent", "House Broker", "Real Estate Agency Consultant", or the equivalent thereto, in any language or bearing any other word whatsoever in any language which may reasonably be construed to imply that he is a registered estate agent or that he is engaged in estate agency practice or business;**
 - (aa) carry on business or take up employment as an estate agent;**
 - (b) display any signboard or poster or use, distribute or circulate any card, letter, pamphlet, leaflet, notice or any form of advertisement, implying either directly or indirectly that he is a registered estate agent or that he is engaged in estate agency practice or business;**

- (ba) offer for sale, rent or lease or invite offers to purchase, rent or lease any land, building and any interest therein irrespective of whether such land, building and interest is located within Malaysia or outside Malaysia:**

Provided that where foreign properties are to be marketed in Malaysia, such offer or invitation shall be made by or through an estate agent practising and residing in Malaysia on behalf of a principal or an estate agent practicing or residing outside Malaysia;

- (c) undertake any of the work specified in section 22B; or**
- (d) be entitled to recover in any court any fees, commissions, charges or remuneration for any professional advice or services rendered as an estate agent.**

(2) Notwithstanding subsection (1)-

- (a) an owner of any land, building and any interest therein may sell or rent or lease or sublease or offer to sell or rent or lease or sublease such land, building and interest;**
- (b) a licensed auctioneer may sell or offer to sell any land, building and any interest therein by public auction;**

[(b) Am. Act [A1550:s.20](#)]

- (c) a holder of a power of attorney in respect of any land, building and any interest therein, acting gratuitously and for no commission, fee, reward or other consideration, may sell, purchase or rent, or**

offer to sell, purchase or rent, such land, building and interest; and

[(c) Am. Act [A1550:s.20](#)]

(d) a negotiator may assist the registered estate agent in the estate agency practice.

(2A) For the purpose of paragraph

(2)(d) , "[negotiator](#)" means a person who is employed by a registered estate agent to assist him in the estate agency practice.

(3) The provisions relating to estate agency practice in subsections (1) and (2) shall apply *mutatis mutandis* to a firm.

[15] In the Court's view the purport of the above provisions of the Act is to regulate the business of estate agency and the more important objective is to prevent the public from being duped by unauthorised person carrying out the business of estate agency. The Act requires the person registered as an estate agent to perform his duties and not to merely delegate to other persons who are not so qualified. The Act also disallows an unqualified person to hold out as a registered estate agent

[16] In this case both the Plaintiff and the Defendant have flouted the above provisions of the law which in fact is a criminal offence under the Act.

[17] Section 30 of the Act outlines the offences under the Act and the punishment thereof:

Any person who-

(a) procures or attempts to procure registration or an authority to practise under this Act by knowingly making or producing or causing to be made or produced any false

or fraudulent declaration, certificate, application or representation whether in writing or otherwise;

- (b) wilfully makes or causes to be made any falsification in the Register or Register of Probationers or Register of Firms;
- (c) forges, alters or counterfeits any certificate, testimonial, order or authority to practise under this Act;
- (d) utters or uses any forged, altered or counterfeit authority to practise under this Act knowing the same to be forged, altered or counterfeited;
- (e) impersonates a registered valuer, registered appraiser, registered estate agent or registered property manager;
- (f) buys or fraudulently obtains an authority to practise under this Act issued to another person;.
- (g) *(Deleted by Act [A1550:s.28](#))*
- (h) not being a person acting under the immediate personal direction and supervision of a registered valuer, registered appraiser, registered estate agent or registered property manager carries out or undertakes to carry out any work provided under section 19, 22B or 22I;
- (i) acts in contravention of section 21, 22C or 22J; or
- (j) aids and abets in the commission of an offence under this Act,

commits an offence and is liable on conviction to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both and he shall be liable to a further penalty of one thousand ringgit for each day during the continuance of such offence.

(2) Any person who, without any lawful authority-

- (a) acts as a valuer, appraiser, estate agent or property manager for any party or acts in any capacity as a valuer, appraiser, estate agent or property manager whether the primary or principal object of his business is valuation, appraisal, estate agency or property management or whether any incidental part of his business is valuation, appraisal, estate agency or property management; or**
- (b) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorized to act as, a valuer, appraiser, estate agent or property manager, or that he is by law so qualified or authorized, commits an offence and is liable on conviction to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.**
- (4) No costs, commission, fee, reward or any other consideration in respect of anything done by an unauthorised person in respect of any act which is an offence under subsections (1) or (2) shall be recoverable in any court.**

Parties coming to Court with dirty hands

[18] It is trite principle of the law that parties cannot come to Court asking for relief if their hands are tainted. In this case it is clear that both the Plaintiff and the Defendant have come to Court by flouting the law and committing an offence under the law.

[19] In the case of *Chung Khiaw Bank Ltd v. Hotel Rasa Sayang Sdn. Bhd. & Anor* [1990] CLJ rep. 57 it was stated as follows:

Since the plaintiff company's action did not come within any of the exceptions mentioned in s. 48 of the Ordinance the transaction was held to be unlawful. The plaintiff company's action was dismissed by the learned Judge following an old authority on the enforcement of an illegal contract as stated by Lindley LJ in Scott v. Brown, Doering, McNab & Co. [1892] 2 QB 724:

Ex turpi causa non oritur actio. This old and well-known legal maxim is founded in good sense, and expresses a clear and well-recognised legal principle, which is not confined to indictable offenses. No Court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the Court, and if the person invoking the aid of the Court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the Court ought not to assist him. If authority is wanted for this proposition, it will be found in the well-known judgment of Lord Mansfield in Holman v. Johnson.

Conclusion

[20] The Court for the reason stated above therefore chose not to entertain the claim of both the Plaintiff and the Defendant and dismissed the claim and counter claim and directed both parties to bear their own cost.

Dated: 14 SEPTEMBER 2023

(DATO' HAJI AKHTAR BIN TAHIR)

Judge

High Court of Malaya, Kuala Lumpur

Counsel:

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For the defendant - Michael Chow; Neoh Kai Sheng; T/n Michael Chow

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Cases referred to:

Chung Khiaw Bank Ltd v. Hotel Rasa Sayang Sdn. Bhd. & Anor [1990] CLJ rep. 57