



**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY MALAYSIA
(CIVIL DIVISION)**

[CIVIL ACTION NO: S2-22-566-2006]

BETWEEN

- 1. SOH LIAN TENG**
- 2. WONG KOOI FOON**
- 3. BARON WELL (M) SDN BHD ... PLAINTIFF**

AND

- 1. LAI TAK SOON DANIEL**
- 2. SHAFINAH HASHIM**
(both practising under the name ... DEFENDANTS
and style of Messrs T.S. Lai &
Shafinah)

LEGAL PROFESSION: *Solicitors - Stakeholders - Appointment of - Whether defendants validly appointed by 3rd plaintiff as solicitors for purpose of sale and purchase of property - Whether 3rd plaintiff could only act through its board of directors - Whether a mandate from the board of directors via a board resolution necessary - Whether acts by PW1 to appoint defendant as solicitors were ultra vires the company - Whether possible for PW1 to appoint firm as 3rd plaintiff's stakeholder*

LEGAL PROFESSION: *Solicitors - Stakeholders - Whether defendants were stakeholders for the 10% advance payment in respect of the sale and purchase of property - Whether solicitors held money as stakeholder or received monies as agent of the Vendor to be released to Vendor upon demand - Whether defendants acted accordingly in respect of the 10% advance payment - Whether defendants were liable to pay the plaintiffs the sum of RM300,0000 or part thereof*

[Plaintiffs' claim against defendants dismissed with costs of RM70,000.]

Case(s) referred to:

Sarawak Building Supplies Sdn Bhd v. The Director of Forests & Ors [1991] 3 CLJ 706 (refd)

Solomon v. A. Solomon & Co Ltd [1897] AC 22; [1895] All RR Rep 33; 13 TLR 46 (foll)

GROUND OF JUDGMENT

BRIEF BACKGROUND

1. The plaintiffs Soh Lian Teng (“PW1”), Wong Kooi Foon (2nd plaintiff”) and Baron Well (M) Sdn Bhd (“3rd plaintiff”) had commenced this action against the defendants Lai Tak Soon, Daniel (“1st defendant / DW2”) and Shafinah Binti Hashim (“2nd defendant”), who are advocates and solicitors practising under the

name and style of Messrs T.S. Lai & Shafinah (“**the firm**”) on a purported breach of contract. By their Writ and Statement of Claim (“**SOC**”) the plaintiffs sought to recover monies from the firm in the sum of RM300,000.00 which the plaintiffs claimed had been released to the firm as the 3rd plaintiff’s stakeholder pursuant to the purported sale and purchase of a property known as Master Title No. 689, Mukim 9, Negeri Pulau Pinang which consisted of 76 lots of lands in an abandoned project (“**the Property**”).

2. The case proceeded by way of a full hearing with one witness having testified for the plaintiffs and four (4) witnesses testified for the defendants. After giving full consideration to the evidence, both documentary as well as testimonial, and the submissions by both the learned Counsels for the respective parties I dismissed the plaintiffs’ claim against the defendants with costs as the plaintiffs had failed to prove their case against the defendants on the balance of probabilities. After hearing a short submission on the issue of costs I ordered for costs of RM70,000.00 to be paid by the plaintiff to the defendants.
3. The Plaintiffs being dissatisfied with the said decision appealed to the Court of Appeal against the whole of the said decision.

THE DOCUMENTS

4. At the outset of the trial parties have agreed for the following documents to be used:



Description		Document
i. Bundle of Pleadings	-	“A”
ii. Common Agreed Document	-	“B”
iii. Issues To Be Tried	-	“C”
iv. Statements of Agreed Facts	-	“D”
v. Defendant’s Bundle of document	-	“E”

THE ISSUES TO BE TRIED

5. Parties to the action had raised (5) five issues for this court’s determination as shown in the Document marked as “C”. For ease of reference the same are reproduced below as follows:

- i) Whether the defendants were validly appointed by the plaintiffs as the plaintiffs’ solicitors for the purpose of the sale and purchase of the Property;
- ii) If the answer is in the positive, whether the defendants had acted accordingly pursuant to that appointment;
- iii) Whether the defendants were stakeholders for the 10% advance payment in respect of the sale and purchase of the Property;
- iv) Whether the defendants had acted accordingly towards the 10% of the advance payment; and

- v) Whether the defendants' firm is liable to pay the plaintiffs the sum of RM300,000.00 or part thereof.

CASE FOR THE PLAINTIFF

6. PW1 and the 2nd plaintiff are husband and wife. The 3rd plaintiff is a company acquired by PW1 and his son, one Soh Kee Koon as a vehicle to acquire the Property. Both PW1 and his son Soh Kee Koon are directors of the 3rd plaintiff. PW1 used to work as a meat seller and had also invested in the property market. For the purpose of his investments in the property market, PW1 had on several occasions appointed the firm to be his solicitors to handle the sale and purchase transactions (see Recitals (5) at page 88 of **Exhibit P-2 at page 87 - 97 of Document marked "B"**).
7. PW1 came to know that one Kuan Swee Peng ("**Kuan / DW3**") who claimed to be the beneficial owner of the Property, was looking for potential buyers for the said Property. As PW1 was interested to invest in the said Property PW1, another person said to be PW1's partner by the name of Chan Ping Hong ("**Chan / DW4**") and Kuan proceeded to Penang to view the said Property. As a follow up from the site visit PW1 and Chan had agreed to acquire the 3rd plaintiff as a vehicle to purchase the said Property at an agreed price of RM800,000.00. However at that point in time the mode of payment for the purchase of the said Property had not yet been finalised.

8. PW1 then received a copy of the draft agreement in respect of the sale and purchase of the Property at the office of the firm (see **Exhibit P-5 at page 122 - 130 of Document marked as "B"**). The Recital of the said Exhibit P-5 clearly stated that the Purchaser had appointed the firm, whose address is at 13th Floor, Lee Yan Liang Building, Jalan Tun Perak, 50050, Kuala Lumpur as the Purchaser's (**3rd Plaintiff's**) solicitors.
9. On 14.9.2000 PW1 had paid the sum of RM80,000.00 (**Exhibit P-6 at page 121 of Document marked as "B"**) to DW2 at the firm, as an initial deposit to be held by the said firm as a stakeholder. DW2 had also requested PW1 to pay the balance RM220,000.00 to the said firm and informed PW1 that he would be sending Chan to collect the cheques from PW1.
10. PW1 and the 2nd plaintiff then issued a cheque each amounting to RM140,000.00 and RM80,000.00 respectively to be handed to DW2 through Chan. As PW1 is an illiterate both he and the 2nd plaintiff had placed their signatures the respective columns on the cheques but left the column pertaining to the name of the payee to be filled up by DW2. PW1 testified that he had done so because he trusted DW2 as DW2 had on several occasions assisted him in the sale and purchase transactions.
11. On 11.2.2001 the firm had caused two official receipts to be issued in the name of the 3rd plaintiff as proof of payment of the deposit in the sum of RM80,000.00 and the balance sum of RM220,000.00 which were paid earlier through Chan (see **Exhibit P-9 and P- 8 at page 49 & 49 of Document marked "B"**).

12. Despite having paid the above mentioned sum to the firm as agreed, the sale and purchase agreement was never finalised and the deal too was never concluded. However DW2 had released the initial deposit of RM80,000.00 to Kuan even though the sale and purchase agreement had not been executed.
13. Hence the plaintiffs in this action claimed from the defendants the sum of RM300,000.00, interest on the said RM300,000.00 and costs.

CASE FOR THE DEFENDANTS

14. DW2 admitted that at the material times both DW2 and the 2nd defendant were partners in the firm. DW2 further testified that his partner one Shafinah binti Hashim had since left the firm and could not be located. DW2 admitted that even though there were two solicitors in the firm at the material times he was the only person who was personally in charge of the transaction involving the Property. DW2 denied that the firm was appointed by PW1 and or the 2nd plaintiff and or the 3rd plaintiff as their solicitors for the purpose of the sale and purchase of the Property. According to DW2 the firm was acting for Sam Hup Huat Sdn Bhd who was the vendor (“Vendor”) of the said Property. In the course of that the firm had received the sum of RM80,000.00 as the initial deposit for the said transaction.
15. DW2 knew Kuan as a personal friend and Kuan is also an old friend of his father. According DW2, PW1 was introduced to DW2

by Chan. Around August 2000, Kuan claimed that he had an abandoned project (“**the Property**”) that Chan and PW1 were keen to purchase. Kuan had requested DW2 to represent him and the Vendor in the transaction as the Vendor was interested to dispose of the said Property at the price of RM800,000.00. PW1 had agreed with Kuan to pay RM80,000.00 as an initial deposit to procure the Property and this sum was received by the firm for onward transmission to the Vendor.

16. However as the 3rd plaintiff had not been incorporated and consequently no sale and purchase agreement could be executed with the 3rd plaintiff, PW1 had paid the deposit of RM80,000.00 to the firm for onward transmission to Kuan to enable Kuan to redeem the 76 titles of the Property from the relevant authority. DW2 had then paid the said sum to Kuan on 14.9.2000.
17. DW2 had admitted that he had acted for PW1 in respect of some transactions involving some properties but at the same time PW1 had also engaged some other solicitors to handle his other similar transactions. However in relation to the transaction involving the said Property PW1 had appointed Messrs K.Y. Soo as his solicitors to handle the transaction. It was obvious from Exhibit D-19 (**at page 1 of Document marked as “E”**) that Messrs K.Y. Soo was acting for the 3rd plaintiff in the deal. If it was true as claimed by PW1 that DW2 was acting for the 3rd plaintiff, Messrs K.Y. Soo would have written to him for the permission to represent the 3rd plaintiff. Even the letter that was written by the said Messrs K.Y. Soo had stated that the initial deposit of RM80,000.00 was paid to the firm as solicitors for the Vendor. The said Messrs K.Y.

Soo (**Exhibit P-10 at page 59-60 of Document marked as “B”**) had also sought confirmation from the firm if the firm was acting for the Vendor in the said transaction.

18. As regards the RM220,000.00 which PW1 claimed had been paid to the firm, PW1 himself had admitted that the two (2) cheques comprising of RM140,000.00 and RM80,000.00 respectively were in fact signed by PW1 and the 2nd plaintiff without the payee's name written on those cheques. DW2 denied having received those two cheques from PW1. This fact was confirmed by PW1 who had testified that he did not hand these two cheques to DW2 directly but the cheques were given to Chan to be delivered to DW2.
19. DW2 refuted the plaintiffs' claim that the firm was appointed by the 3rd plaintiff as the 3rd plaintiff's stakeholder and cited the following reasons:
 - i. Neither PW1 nor the 3rd plaintiff had given any instructions to DW2 and or the firm to act as a stakeholder whether in writing or verbally;
 - ii. From the discussion held between PW1, Chan and Kuan, RM80,000.00 was to be paid to Kuan to enable Kuan to redeem the 76 titles of the Property and to pay quit rents;
 - iii. The RM80,000.00 was paid on 14.9.2000. At the time DW2 received the letter from Messrs K.Y. Soo dated 15.1.2001

the letter made no mention of the 1st defendant's position as a stakeholder as claimed by PW1;

- iv. Messrs K.Y. Soo in their letter dated 15.1.2001 had queried the firm if the RM300,000.00 which the firm was alleged to have received from the 3rd plaintiff comprised of two parts, the RM80,000.00 meant for payment of the initial deposit and whether the remaining RM220,000.00 was paid to them as stakeholder. It was clear from Messrs K.Y. Soo's letter RM80,000.00 was not be held as stakeholder as claimed by PW1;
- v. Even PW1's police report (**at page 57-58 of Document marked as "B"**) which was made with the assistance of a lawyer there was no mention that the said RM80,000.00 was paid to the firm as stakeholder. This idea was deliberately brought up for the purpose of this trial. Hence it was merely an afterthought;
- vi. In a sale and purchase agreement the initial deposit would always be paid to the Vendor before the execution of the sale and purchase agreement and this sum was not meant to be held as stakeholder;
- vii. The query by the 3rd plaintiff's solicitors, Messrs K.Y. Soo was in relation to RM220,000.00 held as stakeholder but not the RM80,000.00 paid as initial deposit;

- vii. PW1 knew from the start that it was Kuan who was the recipient and or the beneficiary of the RM80,000.00, initial deposit but purposely refrain from suing Kuan and or the Vendor for the return of the RM80,000.00. This clearly showed that the plaintiffs were acting in bad faith towards DW2;
 - ix. The payment of RM80,000.00 was in fact paid to the Vendor. Despite a police report having been lodged by the PW1, the police did not pursue with the report and had classified the report as No Further Action (“NFA”);
 - x. There was no consideration in respect of the alleged stakeholding; and
 - xi. The plaintiffs’ pleaded case against the defendant was pursuant to the purported stakeholding and not an action premised on professional negligence, fraud and or misrepresentation.
- 20.** DW2 further testified even the directors of the Vendor had given their express permission to Kuan to act as their agent as well as to handle the sale and purchase transaction. DW2 did not receive any instruction from the Vendor to prepare the sale and purchase in respect of the Property. The draft which was produced by PW1 in court was in fact prepared by Kuan and given to PW1. In so far DW2 was concerned he never acted for Chan and or for the 3rd

plaintiff in the transaction. Both Chan and PW1 had intended to purchase the Property by using a nominee company to be incorporated at a subsequent date which was the 3rd plaintiff.

21. DW2 had also testified that he did not receive the sum of RM220,000.00 from the 3rd plaintiff but he had received a cheque for RM220,000.00 from Chan himself purportedly on behalf of the 3rd plaintiff on 8.12.2000. Later DW2 was asked by PW1's runner, one Zainuddin, to issue a receipt in favour of the 3rd plaintiff which DW2 did. DW2 had no knowledge that the cheque dated 8.12.2000 given to the firm had bounced on 9.12.2000. This information came to DW2's knowledge through his bank statements which he received on 14th or 15th January 2001.
22. Chan ("DW4") who was called as the witness for DW2 testified that as there were some disputes between him and PW1 the two (2) cheques for RM140,000.00 and RM80,000.00 respectively which he received from PW1 to be handed to DW2 as the balance of the initial RM300.00.00 payment to the Vendor, was in fact deposited into DW4's account. Chan stated that he issued his own cheque for the same amount and handed the cheque to DW2 but subsequently he had allowed the cheque to bounce. PW1 had also admitted in his testimony that the two (2) cheques were not given by him to DW2 personally but the same were handed to his partner Chan to be delivered to DW2.

POINTS RAISED BY THE PLAINTIFFS

23. Amongst the issues raised by the plaintiffs were as follows:

- a. PW1 had engaged DW2 in four (4) other similar transactions. Out of these four transactions 2 were successful and the other two were unsuccessful (see **Exhibit P-2 at page 87-97; ID-3 at page 98-109; ID-4 at page 119-120 of Document marked “B”**). This fact was not denied by DW2. Based on these previous transactions it was obvious that the firm was also the plaintiffs’ solicitors handling the transaction concerning the Property;
- b. There is no legal requirement for retainer of solicitors to be in writing. The same could be made verbally. The facts and circumstances of each case would have to be examined in order to ascertain if DW2 and or the firm were in fact appointed by the plaintiffs as the plaintiffs’ solicitors;
- c. The pending acquisition of the 3rd plaintiff by PW1 and his son was within DW2’s knowledge as DW2 had issued official receipts dated 11.1.2001 to the 3rd plaintiff (see **Exhibit P-8, P-9 and P-49 of Document marked “B”**);
- d. Recital (5) in the draft handed to PW1 clearly stated that the firm was the Purchaser’s solicitors. Hence this court must infer the intention of parties based on the unsigned agreement as this agreement was indicative of the parties’

intention. The duty of the stakeholder had also been explained extensively in the draft agreement. There were cogent and credible evidence which showed that the defendants were acting for the plaintiffs as stakeholders;

- e. The firm could not produce evidence that it was appointed as solicitors for the Vendor;
- f. The firm had to prove that Kuan was the beneficial owner of the Property;
- g. There was no reason for the plaintiffs to sue Kuan and or Chan as there was no proof that the monies were released to Kuan. With regards to the RM220,000.00 there was no reason to sue Chan as the monies were paid to the firm as a stakeholder;
- h. Receipts were issued and these were valid proofs of payment by the 3rd plaintiff;
- i. No reason for prudent solicitors to release monies to the general manager without prior authorisation of the 3rd plaintiff: and
- j. Chan was not a truthful witness. Chan could not prove that that he had any business relationship with the plaintiffs.

POINTS RAISED BY THE DEFENDANTS

24. The defendants, on the other had raised the following issues:
- a. Paragraph 6 and 7 of the SOC demonstrate that the plaintiffs' pleaded case relate to the purported appointment of the defendants as the 3rd plaintiff's solicitors only and not in respect of the 1st and 2nd plaintiffs. The 3rd plaintiff is a company and as a company the 3rd plaintiff could only act through its solicitors. The defendants could only be retained by the solicitors for the 3rd plaintiff. The 1st and 2nd plaintiffs became directors and shareholders in the 3rd plaintiff on 15.4.2002. There was no appointment letter from the 3rd plaintiff for the firm to act as its solicitors. In law a company can only act through its board of directors. Any other acts are *ultra vires* the company. Hence the firm in this case could never have been appointed as solicitors of the 3rd plaintiff;
 - b. The burden of proof was on the plaintiffs to prove that the firm had been appointed by the 3rd plaintiff as its solicitors. There was no documentary proof that the firm was in fact appointed as solicitors for the 3rd plaintiff. The plaintiffs were not issued with invoices as proofs of appointment. PW1 admitted that no initial legal fees or disbursement were paid to DW2 and or the firm for their services as stakeholders. There could not be implied retainer unsupported by consideration. The plaintiffs failed to call witnesses to corroborate their version. At the same time PW1 had testified

that besides the firm, PW1 had access to other solicitors as well;

- c. In fact it was Messrs K.Y. Soo who was appointed as the 3rd plaintiff's solicitors. This was proof by the letter of appointment vide Exhibit D-19 which was dated 11.1.2001. This was further corroborated by Exhibit P-10 where Messrs K.Y. Soo had in clear and unambiguous words stated that the said Messrs K.Y. Soo was acting for the Purchaser, which was the 3rd plaintiff. Even Mr K.Y. Soo himself ("DW1") testified that Messrs K.Y. Soo had all along known that the firm was acting for the Vendor. Mr K.Y. Soo had also confirmed that he was acting on behalf of the Purchaser. Mr K.Y. Soo had also reiterated that he was under the impression that the firm was acting for the Vendor;
- d. At paragraph 8 of the SOC the plaintiffs claimed that the RM80,000.00 was in fact paid to the firm as a stakeholder. RM80,000.00 was never meant to be held as stakeholder but as part payment for the transaction. This fact was confirmed by Messrs K.Y. Soo. This evidence was supported by PW1's own police report (see **page 57 & 58 of Document marked as "B"**). RM80,000.00 was paid as part payment to the Vendor. This piece of evidence was also supported by the testimony of DW3 and DW4 as well as Messrs K.Y. Soo's letter. (see **Exhibit P-10 at page 60 & 61 of Document marked as "B"**);

- e. The issue of stakeholding would only arise in the event there were monies held by the 1st defendant. DW2 had no obligation to return the monies as he had not received the monies. PW1 had refused to disclose the two (2) cheques that were pleaded which were for the sum of RM140,000.00 and RM80,000.00 respectively. Even the cheque butts were not produced in this court by the plaintiffs;
- f. The defendant had received a single cheque for the sum of RM220,000.00 which was subsequently dishonoured (see **page 42 of Document marked “B”**);
- g. Chan Ping Hong (“DW4”) admitted that he had received the two (2) cheques and had banked in the monies to his account and subsequently substituted the two cheques with his own single cheque amounting to RM220,000.00 which he had allowed to bounce (see **DW4 Statutory Declaration at page 134 of Document marked as “B”**);
- h. PW1 had failed to lodge a police report pertaining to the misappropriation of the two cheques by DW4; and
- i. The plaintiffs had failed to prove their case against the defendants on the standard required by the law, which was on the balance of probabilities. Therefore the defendants urged the court to dismiss the plaintiffs’ claim with costs.

EVALUATION OF EVIDENCE AND FINDINGS BY THE COURT

25. Having evaluated the evidence before me both testimonial and documentaries the following are my findings. I propose to deal with these two (2) issues first.
- i) Whether the defendants were validly appointed by the 3rd plaintiff as the 3rd plaintiff's solicitors for the purpose of the sale and purchase of the Property.
 - ii) If the answer is in the positive, whether the defendants had acted accordingly pursuant to that appointment.
26. At paragraph 6, 7 and 8 of the SOC, PW1 pleaded that DW4 who claimed to be an agent of the firm had introduced PW1 to DW2 who later confirmed that the said firm would be acting as the solicitors for the 3rd plaintiff in respect of the sale and purchase of the Property and would be preparing the relevant documents for the purpose of the transaction. As a follow up from the said meeting and at the instruction of the 1st defendant, on 14.9.2000, PW1 had issued RHB cheque number 111401 in the sum of RM80,000.00 as the 10% of the initial payment of the purchase price in the name of the firm as a stakeholder.
27. It could be gleaned from the above-mentioned paragraphs only the 3rd plaintiff had retained the said firm as its solicitors in respect of the purported transaction. There was no mention of PW1 or the 2nd plaintiff having retained the firm to act as their solicitors. The

plaintiffs' claim against the defendants was based on a retainer by the 3rd plaintiff. From the evidence adduced during the trial the 3rd plaintiff was registered as a corporation 19.4.2000. (See **Exhibit P-1 at page 21-26 of Document marked as "B"**). The initial directors of the company up to 15.4.2002 were Ong Tien Poh and Abdul Ghani bin Mohd Yusoff. Both PW1 and his son Soh Kee Koon became the directors of the 3rd plaintiff on 15.4.2002 (see **D-18 in Document marked as "E"**).

- 28.** The payment of the initial deposit of 10% of the purchase price which was equivalent to RM80,000.00 was made on 14.9.2000 before PW1 and his son became the directors of the 3rd plaintiff. The balance payment of RM220,000.00 was purportedly made on 8.12.2000 *vide* the two cheques received by DW4 for onward transmission to the firm. At the time the RM80,000.00 initial deposit and or the 10% of the purchase price was paid the 1st and 2nd plaintiffs were not the directors or shareholders of the 3rd plaintiff. In law the 3rd plaintiff, a company incorporated under the Companies Act 1965 is a separate legal entity and distinct from PW1 and the 2nd plaintiff.
- 29.** This principle had been enunciated in the celebrated case of *Solomon v. A. Solomon & Co Ltd* [1897] AC 22; [1895] All RR Rep 33; 13 TLR 46 where the court had held as follows:

"It is settled law that a company in law is an independent legal entity on its own, separate and distinct from its members who constitute it".

30. As a general rule a company is bound by the act of its agent if his act is within the scope of his actual authority. In *Sarawak Building Supplies Sdn Bhd. v. The Director of Forests & Ors* [1991] 3 CLJ 706 the court quoted Gore Browne on Companies 43rd edition at paragraph 26.3 as follows:

“Each Director has not alone power to bind the company unless he has this power specifically delegated to him. Nor can a number of directors, even though they constitute a majority, act without meeting, or at a meeting of which a notice has not been given to the whole body, and acts done by the majority of the board not duly convened as a board meeting (e.g. on occasion of a general meeting of a company) are not valid.”

31. The 3rd plaintiff is a company incorporated pursuant to the Companies Act 1965 and for the purpose of the appointment of solicitors to act on behalf of the 3rd plaintiff there must be a mandate coming from the board of directors *via* the board resolution. As reflected in Exhibit D-18 the board of directors of the 3rd plaintiff were Ong Tien Poh and Abdul Ghani bin Mohd Yusoff and these two directors remained in that position until 15.4.2002. On 15.4.2002 both the original directors resigned and were replaced by PW1 and his son Soh Kee Koon. There was no board resolution passed by the then directors to appoint the firm as the 3rd plaintiff’s solicitors and or stakeholder.
32. From the evidence both testimonial and documentary there was no evidence before this court that there was a resolution by the board of directors of the 3rd plaintiff for the appointment of the firm to act as their solicitors as stakeholders. As at 15.4.2002 and by virtue of

the fact that PW1 and the 2nd plaintiff were not the directors or shareholders of the 3rd plaintiff both PW1 and the 2nd plaintiff had no capacity to retain the firm as the 3rd plaintiff's solicitors.

33. The sum of RM80,000.00 was paid to the Vendor through the defendant on 19.9.2000. The two (2) cheques drawn by PW1 and the 2nd plaintiff amounting to RM140,000.00 and RM80,000.00 respectively were misappropriated by DW4 who had admitted under oath that he had deposited the cheques into his account and had issued his own single cheque amounting to RM220,000.00 which was deposited into the defendants' account on or around 8.12.2000 which he had allowed to bounce.
34. With the above facts it is clear that no board meeting was convened and no resolution was passed by the board of directors of the 3rd plaintiff to retain the firm as its stakeholder in respect of both payments. In law the 3rd plaintiff can only act through its board of directors. Acts of other person not delegated with the powers and or authority by way of board resolution were therefore invalid and not binding.
35. There was no evidence adduced by the plaintiffs to prove the 3rd plaintiff had appointed the firm as stakeholders whether testimonial or documentary. There was also no evidence to prove to this Court that the 3rd plaintiff or any of the other plaintiffs had paid their initial legal fees to DW2 to retain the firm as their stakeholders. In his evidence before me PW1 admitted that no legal fees were paid. Neither were invoices issued by the firm to show that it had agreed to be appointed as solicitors for the 3rd plaintiff. The plaintiffs had

also failed to prove to the court that there was consideration for the purported appointment of the firm as solicitors of the 3rd plaintiff as claimed by them. There cannot be an implied retainer unsupported by consideration.

36. This was further supported by the evidence of DW1, from Messrs K.Y. Soo who testified that his firm of solicitors was appointed by the Purchaser as the Purchaser's solicitors. The 3rd plaintiff had instructed Messrs K.Y. Soo to liaise with the Vendor's solicitors.
37. With regards to the above issues the court is of the view that 3rd plaintiff is a company which can only act through its board of directors. The acts of PW1 to appoint the defendant as its solicitors as claimed were *ultra vires* the company. Hence it is impossible for PW1 to appoint the firm as the 3rd plaintiff's stakeholder. Further, all payments were allegedly made prior to the acquisition of the 3rd plaintiff by PW1 and his son.
38. In view of the above reasoning I am satisfied that the DW2 and or the firm had not been appointed by the 3rd plaintiff as the 3rd plaintiff's solicitors for the purpose of the sale and purchase of the said Property. This would answer Issue i) posed for this court's determination. In view of this finding I will not attempt to answer Issue ii).
39. The next issues posed for this court's determination was Issue iii) and iv) as follows:

- (iii) Whether the defendants were stakeholders for the 10% advance payment in respect of the sale and purchase of the Property; and
 - (iv) Whether the defendants had acted accordingly towards the 10% of the advance payment;
- 40.** The plaintiffs claimed that on 14.9.2000, PW1 had issued RHB cheque number 111401 in the sum of RM80,000.00 (**Exhibit P-6 at page 121 of Document marked as “B”**) as the 10% of the initial payment of the purchase price in the name of the firm as a stakeholder. As I had ruled above that the 3rd plaintiff had failed to prove that it had appointed the defendants as its solicitors there was no issue of stakeholding. The 3rd plaintiff could not recover the said sum from the defendants and or the firm.
- 41.** Further from the facts that were adduced during the trial the payment of RM80,000.00 by PW1 to the firm was not intended to be held as stakeholders. From Exhibit P-16 (**see page 57 & 58 of Document marked as “B”**) which was PW1’s police report lodged with the assistance and presence of his then solicitors, Mr Chan Tse Yuen, PW1 had stated that around June or July 2000 he had issued RHB cheque number 111401 amounting to RM80,000.00 in the name of the firm as the 10% of the purchase price. Exhibit P-10 did not mention that the said sum was meant to be held as a stakeholder.

42. Even Messrs K.Y. Soo's letter dated 15.1.2001 (**Exhibit P-10 at page 59 & 60 of Document marked as "B"**) mentioned that the sum of RM80,000.00 was paid by the 3rd plaintiff ("**Purchaser**") as initial deposit for the purchase of the Property and that the 3rd plaintiff was the Purchaser. MR K.Y. Soo ("**DW1**") had also testified in cross examination that at the time he issued Exhibit P-10 his client ("**PW1**") had informed him that he ("**PW1**") did not appoint the firm as his solicitors for the said transactions. However at the time he vetted the draft of the sales and purchase agreement he observed that the name of the firm appeared as the 3rd plaintiff's solicitors and that prompted him to inquire whether the defendants were acting for the Vendor. DW1 had also stated that PW1 did not instruct DW1 to take over the conduct of the matter from the firm but merely to act as the Purchaser's solicitors. However DW1's appointment as the solicitors for the Purchaser was short-lived because he was informed by PW1 that the matter had been closed. Exhibit D-19 (**see Document marked as "E" at page 1**) a letter issued by the 3rd plaintiff to Messrs K.Y. Soo signed by its Director Sak Soon Po was proof that Messrs K.Y. Soo was in fact acting for the Purchaser, the 3rd plaintiff. During re-examination DW1 confirmed that he was appointed by the 3rd plaintiff to act as its solicitors and if it was indicated to him that the firm was appointed by the 3rd plaintiff he would have written to the firm for permission to act for the 3rd plaintiff. DW1 had also admitted that PW1 was not only his client but his relative and there was no reason for him to lie in court.
43. Kuan ("**DW3**") had also admitted on oath that the said RM80,000.00 had been paid to the Vendor for purposes of the

redemption of the 76 titles for the Property and payment of quit rents.

44. The sum of RM80,000.00 was received by the firm as solicitors and the solicitors did not hold such money as stakeholder but the monies were received as an agent of the Vendor and the same shall be released to the Vendor upon demand. The solicitors holding such monies might only be entitled to interests (See *Corderys Law Relating to Solicitors* at page 115).
45. Based on the aforesaid reasons the defendants could not be held liable as a stakeholder. Any action to recover the monies ought to be filed against Kuan who had admitted under oath, receipt of the monies for and or on behalf of the Vendor. In any event the plaintiffs were already out of time to sue Kuan and or the Vendor. The answer to Issue iii) is in the negative and based on the facts mentioned above Issue iv) would have to be answered in the positive.
46. The last issue for determination is as follows:
- v) Whether the defendants' firm is liable to pay the plaintiffs the sum of RM300,000.00 or part thereof.
47. I had related earlier in the Plaintiffs' case how the RM220,000.00 were purportedly said to have been paid to the defendant through DW4 and what DW4 had done to the two cheques and would not repeat them here. I would like to stress here, PW1 had admitted in evidence that he did not trust DW4. Notwithstanding that PW1 had

given the two cheques to DW4 without the name of the payee written on these cheques. DW4 has testified before me that the cheques that were given to him by PW1 was not handed to DW2 personally but were deposited into DW4's account due to some disputes between PW1 and DW4. DW4 had also admitted in evidence that he had issued another cheque for the sum of RM220,000.00 to replace the two cheques that he had appropriated to his own use and handed his own cheque to the firm. DW4 had also stated that he had allowed the said cheque to bounce (see page 42 of Document marked as "B"). The records tendered in court would show that the single cheque in the sum of RM220,000.00 which was issued by DW4 was deposited by the firm on 8.12.2000 and on 9.12.2000 the same cheque bounced (see page 42 of Document marked as "B").

48. The defendants admitted that they had issued receipts to acknowledge receipt of the cheques and these receipts had the endorsement "**This receipt is valid subject to clearance of cheque**" (see Exhibit P-8 at page 48 in Document marked as "B"). The proof that the cheque issued by DW4 had bounce could be seen at page 41 & 42 of Document marked as "B".
49. Based on my evaluation of the evidence before me I am satisfied that the two cheques amounting to RM140,000.00 and RM80,000.00 respectively which were supposed to be handed to the DW2 were taken by DW4 and did not reach the hands of DW2 and or the firm. DW4 had also testified that he did not onward pay the defendants the sum of RM220,000.00 as there were disputes between them. There was clear evidence before me that the

defendants did not receive the payments in the sum of RM220,000.00 as claimed because the payments went to DW4 who had appropriated the same to his own use.

50. As the plaintiffs' pleaded case was premised on the alleged stakeholding and the evidence disclosed that the said sum was never paid to the defendants in their capacity as stakeholder. The RM80,000.00 was paid as initial 10% deposit and the two cheques drawn by PW1 and the 2nd plaintiff amounting to RM140,000.00 and RM80,000.00 respectively were misappropriated by DW4 the defendants could not in law be held liable as stakeholders. The plaintiffs' main case against the defendants was which premised on stakeholding and not on fraud, misrepresentation or negligence must therefore fail.

CONCLUSION

51. Based on the aforesaid reasons I am satisfied that the Plaintiffs had failed to establish his claim against the Defendants on the standard required by the law which was on the balance of probabilities. Hence the Plaintiffs' claim is dismissed with costs of RM70,000.00 to be paid by the plaintiffs to the defendants.

(ASMABI MOHAMAD)
JUDICIAL COMMISSIONER
HIGH COURT CIVIL (4)
KUALA LUMPUR



Dated : 10 FEBRUARY 2013

Date of Decision : 16 JULY 2012

Date of Notice of Appeal : 29 OCTOBER 2012
(Leave Granted To Appeal)

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