

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No.10 of 1977

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N:

MALAYSIAN ARMED FORCES CO-OPERATIVE
HOUSING SOCIETY LIMITED

Appellants
(Plaintiffs)

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NANYANG DEVELOPMENT (1966) SDN. BHD.

Respondents
(Defendants)

CASE FOR THE RESPONDENTS

Record

1. This is an appeal from an Order of the Federal Court of Malaysia, dated 21st February 1976, dismissing an appeal by the Appellants from a Judgment of Abdul Hamid J. in the High Court in Malaya at Kuala Lumpur decided on 2nd October 1975 whereby it was ordered that by clause 8 of the Agreements dated 15th day of March 1966 and 23rd day of August 1966 the Appellants are liable to pay to the Respondents in addition to the costs of the making of connections for water and electrical services, the costs of laying water mains and electrical wires. By an Order, dated 10th January 1977, the Federal Court of Malaysia granted the Appellants final leave to appeal to His Majesty the Yang Di-Pertuan Agong.
- 20 pp.44
pp.28
pp.45-46
2. This action arises out of two Agreements in similar form entered into between the Appellants and the Respondents dated 15th March 1966 and 23rd August, 1966 relating to the purchase by the Appellants of
- 30 pp.49-60
pp.61-77

Record

houses at Gombak and Ampang respectively. The Respondents are housing developers and the Appellants are a housing co-operative society. The Respondents had an area of land in Gombak and another in Ampang which they proposed to develop as housing estates. By the agreement the Appellants contracted to buy certain of the houses to be constructed by the Respondents. It was agreed that the Appellants would buy 117 units in Gombak (i.e. about one third of the houses on that estate) and 65 units in Ampang (i.e. about half of the houses on that estate). The layout plans of the two estates and the situation within such estates of the lots the subject of the said Agreements (coloured brown) are shown on the plans at Pages 47 and 48 on the Record.

pp.47-48

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3. There were disputes between the Appellants and the Respondents and a claim and counterclaim were filed respectively by the parties. However, all other issues between the parties having been settled by agreement, the sole issue which remained to be considered by the High Court and the Federal Court of Malaysia concerned the construction of clause 8 of each of the two said Agreements, such clause being in the same form in each Agreement.

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pp.53,65

4. Clause 8 of each Agreement was in the following terms:-

"The Company further undertakes to apply on behalf of the Purchaser for the connection to the said houses of such water and electrical services as are provided by the local authority but all costs of the making of such connections inclusive of the cost of laying water mains and of electric supply and metering thereof shall be borne and paid by the Purchaser".

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p.38

5. In the Federal Court the issue between the parties was stated in the Judgment of Suffian L.P. as follows :-

"Should the society pay for connecting the water and electricity supply of these houses up to the lot boundary only (as contended by the society) or should it also pay for laying water mains and electricity wires along the roads leading to these houses (as contended and successfully by the developer)?".

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The latter construction was accepted both by Abdul Hamid J. and by the three Judges of the

Federal Court unanimously.

pp.42-43

6. Before Abdul Hamid J. the Appellants adduced evidence of surrounding circumstances alleged to be relevant to the interpretation of the said Agreements. However, for the reasons set out in his Judgment, such evidence was not considered by the learned Judge to be of assistance in interpreting the Agreement. Accordingly both Abdul Hamid J. and the Federal Court interpreted Clause 8 by reference to the terms of the Agreement as a whole and without reliance on extrinsic evidence or material.

p.16

p.24

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7. In the Respondents' respectful submission the approach of Abdul Hamid J. and of the Federal Court to the interpretation of the Agreement was correct in law. In particular, by Clause 8 of the Agreements the costs for which the Appellants were responsible were specifically stated to be "inclusive of the cost of laying water mains and of electricity supply and metering thereof". For the reasons given by the Federal Court, it is not consistent with the natural meaning of those words, and in particular of the expression "water mains", to interpret the responsibility of the Appellants as limited to meeting the cost of connecting the individual houses to the water and electricity supply in the adjoining road. The reference to "water mains" must be a reference to the main water pipes laid along the streets onto which the houses front and connecting with the previously existing installations of the responsible authority. In the context the reference to "electricity supply" must be read in a corresponding sense. This interpretation is reinforced by clause 9 of the Agreement which placed a specific responsibility on the Respondents for the cost of constructing approach roads and drains. If it had been intended to make the Respondents responsible also for the cost of water and electricity installations, specific provision similar to clause 9 would have been made in the Agreement.

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p.42

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8. The Respondents respectfully submit that this appeal should be dismissed and that the Judgment and Order of the Federal Court should be affirmed for the following, among other

REASONS

- (i) BECAUSE Abdul Hamid J. was right in his construction of Clause 8;

Record

- (ii) BECAUSE the construction placed by Abdul Hamid J. on Clause 8 was harmonious and in conformity with the other provisions of the Agreement;
- (iii) BECAUSE the Federal Court was right in its construction of Clause 8 and its finding that such construction does not do violence to language of the Agreement;
- (iv) BECAUSE the Judgment of Abdul Hamid J. and the Judgment of the Federal Court of Malaysia were right for the reasons given in these Judgments.

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GEOFFREY RIPPON

R. T. KHOO

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