

3Q RESOURCES (M) SDN BHD v SOLIDWIN PROPERTY SDN BHD AND OTHER APPEALS

CaseAnalysis
| [2023] MLJU 1575

3Q Resources (M) Sdn Bhd v Solidwin Property Sdn Bhd and other appeals [2023] MLJU 1575

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COURT OF APPEAL (PUTRAJAYA)

NOR BEE ARIFFIN, GUNALAN MUNIANDY AND MARIANA YAHYA JJCA

CIVIL APPEAL NOS P-02(NCvC)(A)-899-05 OF 2019, P-02(IM)(NCvC)-876-07 OF 2020 AND
P-02(IM)(NCvC)-878-07 OF 2020

21 July 2023

Malik Imtiaz Sarwar (with Surendra Ananth, S Preakas and Y Yogeswaran) (Yoges & Co) in Appeal No P-02(NCvC)(A)-899-05 of 2019 for the appellant.

Bastian Vendargon (with Y Yogeswaran and Anne Vendargon) (Yoges & Co) in Appeal Nos P-02(IM)(NCvC)-876-07 of 2020 and P-02(IM)(NCvC)-878-07 of 2020 for the appellant.

Karin Lim (with Nicholas Lim Wei Jian) (Lim Leng Han & SF Tho) in Appeal Nos P-02(NCvC)(A)-899-05 of 2019 and P-02(IM)(NCvC)-876-07 of 2020 for the respondent.

A Suppiah (Presgrave & Matthew) in Appeal No P-02(IM)(NCvC)-878-07 of 2020 for the respondent.

Gunalan Muniandy JCA:

JUDGMENT

INTRODUCTION

[1] This appeal arises from a decision of the Learned Judicial Commissioner of the High Court in Penang [‘LJC’] in an Originating Summons [‘OS’] filed by the Respondent for the removal of the Appellant’s private caveat entered on the lands which are the subject of dispute. The Appellant’s dissatisfaction in Appeal No. 899 is against the LJC’s decision to allow the Respondent’s OS and in ordering the private caveat to be removed.

[2] In the related appeals, Appeal Nos. 876 and 878, the appeals were against the decision of

the Learned High Court Judge [‘LJ’] to allow the Respondents’ [‘2nd and 4th Defendants’ and 1st and 3rd Defendants’] application to strike out the Appellant/Plaintiff’s Writ and Statement of Claim [‘SOC’] pursuant to Order 18, Rule 19 (1)(a), Rules of Court 2012 [‘ROC’].

BACKGROUND FACTS

Appeal No. 899

[3] The Appellant, 3Q Resources was a Defendant in a High Court Suit No. PA-24NCvC-17-01/2019 taken by the Respondent/Plaintiff, Solidwin Property Sdn Bhd [‘Solidwin’], in which Solidwin applied for the removal of a private caveat entered on 19.11.2018 by the 3Q Resources against the following 3 parcels of land:

- (a) Grant No. 5657, Lot No. 44, Seksyen 1, Bandar Butterworth, Daerah Seberang Perai Utara, Pulau Pinang;
- (b) Grant No. 5658, Lot No. 45, Seksyen 1, Bandar Butterworth, Daerah Seberang Perai Utara, Pulau Pinang; and
- (c) Grant No. 5659, Lot No. 48, Seksyen 1, Bandar Butterworth, Daerah Seberang Perai Utara, Pulau Pinang.

[4] Solidwin prayed for the following reliefs from the High Court:

- (a) an order for the private caveat registered on 19.11.2018 vide presentation No. 0799B2018012048 entered by the defendant on the 3 parcels of land be immediately removed and cancelled by the Registrar of Titles for the State of Penang pursuant to section 327 of the National Land Code 1965;
- (b) an order for the Registrar of Titles for the State of Penang and/or other relevant authorities to give effect to the order of this Court under prayer (a);
- (c) an order for the defendant to pay damages and/or compensation to the plaintiff pursuant to section 329 of the National Land Code 1965 arising out of the entry of the caveat on the 3 parcels of land;
- (d) an order for the damages and/or compensation granted by this Court under prayer (3) to be assessed by this honourable Court;
- (e) interest at the rate of 5% per annum on the damages and/or compensation granted by this Court under prayer (3) calculated from the date of entry of the caveat to the date of full realization;
- (f) an injunction to prevent and/or prohibit the defendant from entering any additional and/or further private caveat and/or from encumbering the land in any manner whatsoever;
- (g) cost; and
- (h) such further and other reliefs as this honourable Court deems fit and proper.

[5] In that case, what happened was that Solidwin bought the 3 parcels of land from Magnum Consortium Sdn Bhd [‘D1’] and executed a sale and purchase agreement dated 25.08.2016 for the purchase price of RM92,815,233.00. Prior to the presentation for registration of the memorandum of transfer in the manner of Form 14A of the National Land Code 1965, Solidwin had, on 13.12.2016, conducted a land search on the 3 parcels of land and was satisfied that the 3 parcels were free from encumbrances. Pursuant to the sale transaction, ownership of the 3 parcels of land respectively as later registered on 24.01.2017 under Solidwin’s name.

[6] In order to finance the purchase of the said lands, Solidwin obtained a banking facility from CIMB Bank Berhad and charged the 3 parcels of land to CIMB. The respective charges on the 3 parcels of land were also registered on 24.01.2017.

[7] Solidwin later entered into several sale and purchase agreements with a total of 43 individual purchasers for the sale of individual plots comprised in the 3 parcels of land.

[8] However, on 19.11.2018 vide a land search Solidwin found that a private caveat has been entered on the 3 parcels of land by 3Q Resources.

[9] Historically, D1 acquired the 3 parcels of land which are the subject matter of the application together with 2 other parcels of land through a public auction and paid RM38 Million for them before the 3 parcels of land were purchased by Solidwin for RM92,815,233.00.

[10] It has to be noted that there was a series of challenges made, either directly by 3Q Resources or by its shareholders and directors, on the defeasibility of the titles to the 3 parcels of land which are the subject matter of the present application. The series of challenges also include 2 other parcels of land which are not related to the present application. The related proceedings are as follows:

- (a) High Court of Malaya at Penang Civil Suit No: 22 - 467 - 2009;
- (b) High Court of Malaya at Penang Originating Motion No. 25 - 16- 2011; and
- (c) High Court of Malaya at Penang Civil Suit No. PA- 22NCVC - 182-11/2018.

[11] After considering the matters above, the Learned Judicial Commissioner ['LJC'] had allowed Solidwin's application with costs of RM5,000.00.

[12] Dissatisfied with the decision of the High Court, hence, the appeal by 3Q Resources in Appeal No.899.

Appeal No. 876 (R23) and Appeal No. 878 (R24)

[13] Appeal. Nos. 878 and 876 are 2 appeals arising out of 2 striking out applications in the Penang High Court vide Civil Suit No. PA-22NCvC- 182-11 /2018 ['Civil Suit 182'].

[14] Civil Suit 182 is a claim by 3Q Resources against six Defendants (including D1, D2, D3 and D4) to set aside 2 Sale and Purchase Agreements for the return of 5 parcels of land known as Lot Nos. 35, 44, 45, 48 and 2816 held under Grant No. 5655, 5657, 5658, 5659 and 71105 respectively, all in Seksyen 1 Bandar Butterworth, Daerah Seberang Perai Utama ['the said Lands'].

[15] According to 3Q Resources, the 5 parcels of land which are the subject matter of these 3 appeals were originally owned by 3Q Resources. [16] Sometime in 2001, Lee Chai Seng ['LCS'], Khaw Wooi Teong, Law Ah Lean and Tan Ban Uu became shareholders and directors of 3Q Resources by way of share transfer from Khaw Tiew Chai ['D5'].

[17] On 03.10.2005, D5 filed Originating Summons No. 24-1537-2005 ['OS 1537'] against LCS to annul the said transfer.

[18] On 27.01.2006, the High Court dismissed the said OS 1537.

[19] The Court of Appeal affirmed the said decision and the Federal Court has also dismissed D5's application for leave against the Court of Appeal decision.

[20] On 15.07.2009, D5 filed a civil suit in the Penang High Court Suit No. 22-467-2009 ['Civil Suit 467'] against LCS to set aside the 27.01.2006 High Court Decision in Originating Summons 1537 and to further obtain reliefs to set aside the share transfer, share allotment and appointment of LCS as a director in 3Q Resources.

[21] The High Court allowed the application on 11.11.2009.

[22] Notwithstanding LCS having filed an appeal, D5 caused 3Q Resources to transfer the said Lands to D1 on 08.03.2010. This was despite LCS's lawyer having put Magnum Consortium Sdn Bhd ['MC'] on notice by way of a letter dated 04.03.2010 to not dispose of the said Lands pending the appeal.

[23] On 24.01.2011, the Court of Appeal allowed LCS's appeal and ordered that LCS was at liberty to apply to the Penang High Court for a restoration to *status quo ante* before 27.01.2010.

[24] LCS had subsequently filed Encl. 49 for restoration of *status quo ante*. This included the setting aside of the transfer of the said lands and the restoration of LCS's shareholding and office as a director of 3Q Resources.

[25] On 26.04.2012, the High Court dismissed Encl. 49. The validity of the transfer of the said Lands to D1 was not decided on. This is evident from the oral grounds of judgment delivered by the Learned Judge, who specifically decided that the said issue should be ventilated at trial.

[26] Finally, on 28.12.2017, the High Court dismissed Civil Suit 467.

[27] D5's appeal against the said decision was dismissed by the Court of Appeal on 18.07.2018.

[28] 3Q Resources then filed Civil Suit No. PA-22NCVC-182-11/2018 ['Civil Suit 182'] to set aside the transfer of the said Lands on 15.11.2018.

[29] However, the said Lands were already transferred from D1 to Solidwin since 25.08.2016.

[30] A private caveat was lodged over the said Lands to preserve the status quo pending the determination of Civil Suit 182.

[31] D1 until D4 then filed an application to strike out 3Q Resources's claims.

[32] The application of D1 and D3 is premised on the following grounds:

- (a) the Plaintiff's claim discloses no reasonable cause of action; or
- (b) it is a scandalous, frivolous or vexatious; or
- (c) it is an abuse of the process of court; or

(d) that the Plaintiff's action is bound by the principles of estoppel, res judicata and acquiescence.

[33] D2 and D4's grounds are as follows:

- (a) the Plaintiff has no cause of action against the D2 and D4; and
- (b) the Plaintiff's Writ and Statement of Claim is an abuse of court process based on the principle of res judicata and estoppel as all the issues and/or allegations raised by the Plaintiff are similar to the previous proceedings in the High Court, Court of Appeal and Federal Court which had been decided in finality and precision by the Courts; and

[34] The High Court allowed the Defendants' application to strike out the Appellant/Plaintiff's Writ and Statement of Claim with costs of RM6,000.00.

[35] Dissatisfied, hence these appeal by the Appellant/3Q Resources in Appeal No. 876 and 878.

OUR DECISION

[36] In essence, the LJC's decision to order removal of the Appellant's private caveat was, amongst others, on the ground that the Appellant is bound by issue estoppel and res judicata because the issues raised involving the ownership/transfer of the said Lands to Magnum Consortium had been duly decided by the previous Court Orders and cases and therefore, the Respondent (3Q Resources) cannot maintain any caveatable interest on the said Land. At the outset, it was agreed among the parties to the 3 appeals before us that the outcome of Appeal No. 899 would follow our decision in Appeal Nos. 876 and 878 as the determination of the issue in the latter appeals would bind Appeal No. 899.

[37] We must first note that the Appellant's civil suit that was struck out by the LJ was for the recovery of 5 parcels of land that originally belonged to the Plaintiff that were subject to foreclosure proceedings that resulted in an Order For Sale ['OFS'] of the lands.

[38] Appeal 876 is, to our minds, a straightforward appeal as it concerns the question whether the LJ had correctly exercised her discretion in making the order to strike out the suit involving return of immovable properties summarily without any opportunity for the Appellant to adduce evidence on the merits of its claim.

[39] Before us, the Appellant advanced the following issues in support of its contention that the LJ had erred in striking out the suit summarily:

- 1) Whether, the sale of the said 5 Lands from the Appellant to the first purchaser, namely Magnum Consortium Sdn. Bhd., was void, unlawful, and illegal, taking into account that there was no mandate to issue the shareholder's resolution relating to the said sale?
- 2) Whether, the sale of the said 5 Lands were contrary to the Order for Sale dated 16.4.2007 (keeping in mind that this Order for Sale still remains valid)?
- 3) Whether, the subsequent purchaser, namely Solidwin Property Sdn. Bhd., having knowledge of the Notice addressed to Magnum dated 4.3.2010, can be considered as a *bona fide* purchaser?
- 4) Whether, in light of the fact above, peculiar to this case, the Court ought to have considered Section 340(4)(b) of the National Land Code 1965?

[39] In view of the above issues, the hub of the Appellant's contention was that the LJ ought not to have struck out the Appellant's claim when she had wholly failed to address issues 2) and 3) above which raised questions of law and fact. Additionally, that all 4 issues were issues that warranted a trial and therefore, it was not a plain and obvious case for striking out under Order 18 Rule 19(1)(a), (b) and (d) of ROC.

[40] At the outset, we would state that we are inclined to uphold the Appellant's position that the contentious issues raised concern disputes of fact and law that would render the Plaintiff's claim not being plainly and obviously unsustainable for invocation of the striking out process. Instead, in our view, the disputes warranted a full and fair opportunity for the Appellant to adduce evidence.

[41] We must stress that we have not disregarded but duly considered the position taken by the Respondent in opposing this appeal. In a nutshell, the grounds the Respondent advanced are as follows:

- 1) The present Suit involves the same facts and issues relating to the same lands purchased by D1 ['MC'] from the Plaintiff in 2010 and which have been ventilated in detail and specifically adjudicated under Enclosure 49 in Civil Suit 22-467-2009; amendment application filed under the same Civil Suit; and under Origination Motion No: 25-16-2011. The Court of Appeal ['COA'] had affirmed the High Court decision in all 3 matters without any further appeal to the Federal Court ['FC'] and therefore binding on the Plaintiff/Appellant. Hence, raising the same issues now amounts to an abuse of the Court process.
- 2) Prior to the purchase of the said lands, the land search showed no encumbrances and they were free from any registered interest. There was also no stay order or injunction to restrain the sale by the Plaintiff. D1 became the registered owner of the said lands upon purchasing the same and paying valuable consideration. The High Court and the Court of Appeal have confirmed that D1 is a bona fide purchaser for value without notice of any wrong doing and that it has obtained an indefeasible title to the said lands under Section 340 of the NLC 1965. As such, the Plaintiff's claim is obviously unsustainable, scandalous, frivolous and vexatious.
- 3) The Appellant is bound by the Judgments and Decisions made by the said Courts as above which are final, conclusive, valid and subsisting and have not been set aside and are binding on the Appellant and its privies. The same issues cannot be re-litigated. It is trite law that there must be finality to litigation.
- 4) The Appellant's claim against D1 is barred by the principle of res judicata, estoppel and acquiescence. Its claim is an abuse of the process of court. It cannot be allowed to have a second bite at the cherry by filing a separate action related to the same issues, allegations and contentions about the validity of the sale, transfer and ownership of the said lands and without setting aside the earlier Court Orders as this would cause injustice to the Respondents (Defendants (1) and (3)).
- 5) The purchase price paid to the Appellant exceeded the reserve price under the Order For Sale ['OFS'] obtained by the Chargee Bank. Hence, the Appellant had benefitted from the sale to MC.
- 6) The principle barring approbation and reprobation would apply against the Appellant as, on the one hand it did not challenge the OFS and had accepted the purchase price while

on the other hand it seeks to set aside or nullify the sale to MC. This suit commenced for this purpose and for return of the subject lands without consideration was in breach of the previous court orders and also an unjust enrichment.

- 7) The Appellant cannot now raise all over the same issues which had been raised and adjudicated upon merely because Suit No: 23-467-2009 had been dismissed or because there has been a change in directors or shareholders in it. The appointment of new directors is irrelevant to the issue of the sale of its lands to MC as it is a separate legal entity that had consented to the sale and benefited therefore suit 467 does not concern this particular sale which is not affected by the same. The previous court orders have not been set aside and therefore, are in force and binding on the Appellant who was privy to the orders.

[42] We now turn to the LJ's reasons for striking out the Appellant's claim summarily on the ground that the Appellant's claim does not disclose a reasonable cause of action against the 1st and 3rd Defendants, and is therefore, frivolous, vexatious, scandalous and an abuse of the Court process.

[43] In concluding as above, the LJ held:

- i) that the shareholder disputes in the Plaintiff Company had nothing to do with the sale of the said 5 Lands to the 1st Defendant;
- ii) that as the 1st Defendant had paid the purchase price to the Plaintiff Company and became the registered owner of the said 5 Lands, the 1st Defendant had acquired indefeasible title and therefore, the Plaintiff Company should be estopped from stating otherwise;
- iii) that the High Court has in Civil Suit 467 (the second action, the suit where the 4 Individual Directors had reinstated themselves as directors) confirmed that the 1st Defendant is a *bona fide* purchaser for the value vide Order dated 27.1.2010, and therefore the Sale and Purchase Agreement dated 8.3.2010 is valid and cannot be set aside;
- iv) that the 3rd Defendant, i.e. the subsequent purchaser of the 3 lands out of the said 5 Lands, was never impleaded in the Summons in respect of the said 5 Lands, and was never involved in any wrong doing for the said 5 Lands;
- v) that the Notice dated 4.3.2010 sent to the 1st and 3rd Defendants were ineffective as there was no order for a stay or an injunction at the material time to stop the sale of the said 5 Lands;
- vi) that the dispute arising in Civil Suit 467 involved the shareholders of the Plaintiff Company and the Defendants, and was not with respect of the said 5 Lands. In any event, there was a finding of fact by the High Court which was later re-affirmed by the Court of Appeal that the 1st Defendant is a *bona fide* purchaser for value and therefore the issue of a private treaty in respect of the sale of the said 5 Lands does not arise. The 1st Defendant is a *bona fide* purchase for value without notice of any wrong doing;
- vii) that because the Plaintiff Company was a party and privy to the proceedings in Civil Suit 467, the issues ought not to be relitigated and therefore, the Plaintiff Company ought to be estopped from denying the validity of the sale. The principles of *res judicata*, estoppel and acquiescence apply.

[44] We will now proceed to make our determination on the core issue in this appeal whether the LJ had correctly decided that the issues brought forth by the Appellant did not warrant a full trial and as such, that the Appellant's claim was a plain and obvious case that was unsustainable to warrant a striking out order under o.18 r.19(1), ROC.

[45] In relation to issue (1) the Appellant rightly brought to our attention that it is settled law that where there is no mandate by a company for the sale of a company asset, such a transaction is void and invalid as held in the Federal Court case of *Tan Chee Hoe & Sons Sdn. Bhd. v Code Focus Sdn. Bhd.* [2014] 3 CLJ 141.

[46] The material part of the FC's judgment is as follows:

"(8) Non-compliance or contravention of the mandatory statutory requirement under s.132C of the Companies Act rendered the SPA void and not enforceable by law. The question of "vacant possession" therefore is no longer relevant. In the circumstances, we would answer the questions posed as follows: viz, that (a) mandatory statutory provisions under s.132C must be complied with and cannot be waived by agreement of the parties; (b) non-compliance or contravention of the requirements renders the contract void and invalid and not enforceable by law; (c) by virtue of s.66 of the Contracts Act, the court of law may order restoration of whatever consideration or advantage paid or given under the contract and (d) being a void contract, the court cannot order damages for breach of any term of the contract in favour of one of the contracting parties."

[47] The allegation made was that the shareholders' resolution passed for the sale of the subject lands was invalid ab initio for contravention of S.132C, Companies Act 1965, as the resolution had not been passed by lawful shareholders.

[48] On the 2nd issue, it was impressed upon us that the sale of the subject lands in this instance was by way of private treaty which was in contravention of the OFS dated 16.04.2017 which mandated the sale to be by public auction.

[49] As rightly suggested to us it could be a "clear usurpation of the legislative function if an order for sale by private treaty is allowed" as held by the High Court in *United Malayan Banking Corp Bhd. v Chong Bun Sun* [1994] 2 MLJ 221.

[50] We also accept that in principle where an OFS is made by the Court, it has to be obeyed and enforced as it is only the Court that is seized of jurisdiction in respect of the property foreclosed. The position cannot be varied or altered even if the Plaintiff Company/Execution Creditor consents to a sale by private treaty which would be contrary to the OFS. Whether the latter mode of sale would, thus, be rendered void is clearly an arguable issue that ought to be tried.

[51] Next, whether the subsequent purchaser, Solidwin Property Sdn Bhd ['Solidwin'] could in law and fact be considered a *bona fide* purchase for valuable consideration is a question that plainly revolved around disputed facts. On this important point, the Appellant's submission found favour with us that as the Respondents had notice of the pending dispute of the status of shareholdings and directorships in the registered proprietor company, then the lawfulness of any subsequent dealings on the said 5 Lands would be questionable.

[52] In the circumstances, had the Respondents acted in good faith, it was incumbent upon them to have questioned the validity of the said sale. The law on this point was expressed succinctly in *Aik Ming (M) Sdn. Bhd. & 8 Ors v Chang Ching Chuan & 3 Ors & Another Case* [1995] 3 CLJ 639, the Court of Appeal held: -

“[5] ... As a matter of law, once a man’s mind has become infected with knowledge of an adverse claim or a doubt or cloud upon the vendor’s right to convey title before he had paid his money in full, he remains what was at the earlier stage: a person who is not a *bona fide* purchaser.”

[53] There could be no doubt that the Notice dated 4.3.2010 was explicit in its warning to the Respondents of the pending disputes raised by the Appellant against the sale of its 5 lands. In addition, the Respondents acknowledged the Notice but failed or neglected to respond to it. They should have been put to enquiry and acted diligently in view of the sale being possibly tainted with illegality.

[54] As the Respondents had clearly been put to notice via the above Notice to at least trigger their suspicion of something amiss as to whether the directors of the Appellant were clothed with authority to enter into the impugned SPA for the sale of the subject lands to the 1st Respondent [‘Solidwin’], the Respondents as outsiders cannot invoke the Turquand rule. [See *Pekan Nenas Industries Sdn. Bhd. v Chang Ching Chuen & Ors* [1998] 1 CLJ 793, the FC]. More importantly, on the instant facts, it was questionable whether in law the Respondents could be considered *bona fide* purchasers for value.

[55] Under the above circumstances where our view is that a valid question was raised as to the validity of the sale by private treaty and whether it was in violation of written law that we have adverted to, there is no necessity for us to deliberate at length issue 4) save to say that it is clearly a triable issue. It is settled law that a chargor is entitled to rely on the provisions of S.340(4), NLC when he intends to challenge a registered charge where the transaction is shown to be in violation of statute or written law. This principle was made clear in *Krishnadas Achutan Nair & Ors v Maniyam Sanykano* [1997] 1 CLJ 636, where the Federal Court held in no uncertain terms that: -

“[4] Parliament has enacted S.340(4)(b) for the purpose of dealing with fact patterns which do not fall squarely in the second sub-section to s.340 of the Code. The term ‘operation of law’ in that sub- section is deliberately used by the legislature to grant relief in cases where contractual or conscientious obligations are undertaken by or imposed on the registered proprietor either at law or in equity.”

[56] It was emphasized that S.340(2) could be extended to instances where violation of written law is suggested and cannot be confined only to cases where there is a suggestion of fraud, forgery or any other matters stipulated in the sub-section.

[57] It was highlighted by the Appellant that issues 1) – 4) that we have discussed above, were never dealt with by the LJ and thus, failed to correctly hold that there were sufficient reasons or issues that merited a full trial and this was not a plain and obvious case for striking out under O.18, 19, ROC.

[58] In the final analysis, the law is that where a claim raises substantial issues and disputes of fact the party pursuing the claim is entitled to adduce viva voce evidence and the contentious claim should not be decided on conflicting affidavit evidence.

[59] We would, lastly, deliberate on the decision of the LJ where she relied on the grounds of *res judicata* and abuse of the Court process in allowing the Respondents’/Defendants’ application for striking out pursuant to Order 18 Rule 19(1)(a), (b) or (d) of the Rules of Court 2012. Her Ladyship relied on the decision of the High Court in Civil Suit 467 that the 1st

Respondent was a *bona fide* purchaser and therefore, the Appellant's/Plaintiff's Civil Suit herein was an attempt at relitigating decided issues.

[60] We are inclined to concur with the Appellant's submission on this crucial point that the LJ had fallen into error when she failed to duly consider the fact that the HC decision dated 27.01.2010 had been reversed by the Court of Appeal ['COA'] on 24.01.2011. In that decision it was ordered that the directors of the Appellant / Plaintiff were given leave to apply for the restoration of the *status quo ante* prior to the decision dated 27.1.2010 in Civil Suit 467 and set aside the Order of 27.1.2010.

[61] Hence, we are convinced that the invocation of the doctrine of *res judicata* by the LJ to dismiss the Appellant's claim *in limine* was incorrect and misconceived. Had the LJ scrutinised the COA decision dated 24.01.2011, she would have found the grounds of *res judicata* and abuse of the Court process were baseless and non-starters and would most likely have taken a contrary view.

CONCLUSION

[62] Our decision at the end of the appeals with brief reasons given was as follows:

- (1) We will pronounce our decision in respect of Appeals 876 and 878, i.e. the appeals against the striking out of the Plaintiff/Appellant's civil suit in the Penang High Court involving 5 lands ("the Properties").
- (2) We must first bear in mind the trite principles governing the striking out of civil claims summarily without having heard the merits. Briefly, a civil claim should be struck out under O.18 R.19 of the ROC pursuant to one or more of the limbs therein only in rare and exceptional cases when the pleaded cause of action is plainly or obviously unsustainable or the pleading does not disclose any reasonable cause of action or the claim is shown to be an abuse of the Court process.
- (3) The Appellant has submitted before us at least 5 important issues of mixed law and fact that are purportedly triable and warrant the claim proceeding to trial and for it to be heard on its merits and for evidence to be adduced by the Plaintiff.
- (4) We have carefully considered the issues that have been raised for determination by the trial Court. Upon doing so, we are satisfied that the contention of the Appellant has merits in law and fact.
- (5) We are in agreement with the Appellant that, *prime facie*, the issues are triable and ought to be resolved at a full trial and not summarily in a striking out application. The issues highlighted to us by the Appellant are, briefly, these:
 - i) Whether the sale of the 5 pieces of land by the Appellant to the 1st purchaser, i.e. Magnum Consortium Sdn Bhd ('MC') was void, unlawful and illegal on the ground that there was no proper mandate to issue the Shareholders' Resolution to sanction the said sale?
 - ii) Whether the above sale was contrary to the Order For Sale ('OFS') dated 16.4.2007 which till to date remains valid and effective?
 - iii) Whether the subsequent purchaser, Solidwin Property Sdn. Bhd. ('Solidwin') having knowledge of the Notice To MC dated 4.3.2010 could still be considered a *bona fide* purchaser?

- iv) Whether, in the light of the peculiar facts above, the Court ought to have invoked S.340(4) of the NLC?
 - v) Whether the LHCJ, despite not having addressed and deliberated upon the important issues put forth by the Appellant as above ought to have summarily struck out the Plaintiff's Civil Suit 182?
- (6) In summary, in view of the conflict of evidence arising from the parties sworn affidavits, the provisions of several laws such as the NLC and the Companies Act that require the Court's interpretation and application to the disputed facts the same ought to be resolved at a trial. Our considered view is that the LHCJ had erred in principle and had failed to properly appreciate the factual disputes in arriving at her decision to allow the Defendants' striking out application.
- (7) In our judgement, the Appellant's SOC discloses a plausible cause of action and outstanding issues of importance that the LHCJ had failed to take cognizance of. There is also the question of whether the HCJ had in law correctly taken into account the issues of *res judicata*, acquiescence and estoppel.
- (8) In conclusion, our decision is that the LHCJ had wrongly exercised her discretion in allowing the Respondents' striking out applications under O.18, R.19(1)(a), (b) and (d) of the ROC. We, accordingly, allow both appeals with costs and set aside the decision and order of the High Court dated 25.6.2020. We fix costs here and below to the Appellant subject to allocator.
- (9) As for Appeal 899, from our record, it was agreed among counsel for the parties concerned that the decision in this appeal would follow the outcome of Appeals 876 and 878. Considering that we have allowed both Appeals 876 and 878, as a matter of course, the present appeal should also succeed. We would, therefore, also allow Appeal 899 with costs here and below and set aside the order of the High Court dated 30.4.2019.