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Chua Boon Hock & 2 Ors
v
Yeow Lee Development Sdn Bhd

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High Court, Kuala Lumpur – Civil Suit No. WA-22NCvC-200-04/2020
John Lee Kien How @ Mohd Johan Lee JC

10 June 6, 2021

Contract *– Specific performance – Sale and purchase of land – Plaintiffs as joint purchasers together with two other non-party purchasers, terminated agreements* 15 *and thereafter sought specific performance after failure by defendant to refund purchase price – Reliefs sought on behalf of non-party purchasers as well, without their consent – Whether plaintiffs lack locus standi to sue without including other joint owners – Whether plaintiffs may seek specific performance of agreements that* 20 *have been terminated – Whether plaintiffs ought to have sued for refund of purchase price instead*

The plaintiffs and two others namely, Soo Teck Lee ("STL") and Lim Siew 25 Kien ("LSK") had jointly purchased from the defendant a piece of land under Pajakan Mukim 240, Lot 4562, Mukim Hulu Langat, Kampung Sungai Tekali ("Lot 4562") at RM1.5 million and another, held under Geran 27808, Lot 1448, Mukim dan Daerah Ulu Langat ("Lot 1448") at RM3.0 million. 30 Separate sale and purchase agreements dated February 24, 2016 and June 29, 2016 were entered into by the parties in respect of Lot 4562 and Lot 1448 respectively.

The parties subsequently agreed to terminate the agreements as the 35 completion of the transactions could not materialise. It was purportedly also agreed that the plaintiffs would return the title to Lot 4562 to the defendant and the defendant in turn would refund the purchase price to the plaintiffs. Pursuant thereto the plaintiffs by way of separate letters dated October 16, 40 2017 and addressed to the defendant, terminated the sale in relation to Lot 4562 and returned the issue document of title to the said land. The sale and purchase agreement in respect of Lot 1448 was likewise terminated with the plaintiffs agreeing to the return of the issue document of title and the defendant refunding the purchase price. The defendant however failed to refund the purchase price whereupon the plaintiffs commenced the instant action for specific performance of both sale and purchase agreements. Neither STL nor LSK were included as parties to the action.

The defendant in response applied to strike out the plaintiffs' claim on the grounds that the same is unsustainable as the plaintiffs as joint purchasers

with STL and LSK, lacked the locus standi to commence the action without their co-purchasers, STL and LSK who had not consented to the filing of the said action; that there is no basis to the plaintiffs' claim for specific performance of the sale and purchase agreements given the plaintiffs' termination of the same. It was submitted that the plaintiffs, having elected to terminate the said agreements as is evident from their letter of October 16, 2017 and their act of returning the issue document of title, cannot approbate and reprobate and are estopped from filing the present suit. The defendant further also submitted that the order for specific performance as prayed for in respect of only 3/5 portion of the subject lands, tantamounts to an attempt to rewrite the sale and purchase agreements to enable a partial purchase of Lots 4562 and 1448 and which is not permissible under the law.

Issue(s)

Whether the plaintiffs lack the locus standi and whether their claim for specific performance is unsustainable.

Held, striking out the plaintiffs' claim with costs of RM15,000 with allocatur fees of RM600

1. The plaintiffs' letters dated October 16, 2017 relating to Lot 4562 and their averment in their affidavit in reply relating to Lot 1448, confirm the termination of the sale and purchase agreements in respect of the said lands. Given the defendant's failure to refund the purchase price in respect of both lands, the available cause of action to the plaintiffs would be to sue for the refund of the said monies. If any, the specific performance sought should be for the monies and not the lands and such specific performance should be prayed for under the termination and not under the sale. [*see p 256 para 56*]

2. The plaintiffs' argument that there was a "condition" or "agreement" to their letter of termination that the sale and purchase agreements in respect of Lot 4562 is only terminated upon the refund of the monies, does not hold water and is inherently unlawful and contradicts the contemporaneous documents. The plaintiffs' letter of October 16, 2017 clearly confirmed the termination and there was nothing therein which provided that the termination is conditional upon the refund of the purchase price for Lot 4562. What the plaintiffs have to do therefore, is to sue instead for the refund of the purchase price and not seek specific performance of a contract that has been terminated. As was held in *Mohd Fariq Subramaniam v Naza Motor Trading Sdn Bhd* [1998] 6 MLJ 193, the jurisdiction of the court to order specific performance is built on the

1 existence of a valid enforceable contract. A similar situation applies to the agreement in respect of Lot 1448. [*see p 259 para 63 - p 261 para 69*]

3. The defendant's claim that the agreements in respect of Lots 4562 and 1448 were terminated unconditionally is corroborated by the affidavit filed by STL who is a non-party, on his behalf and on behalf of LSK and thus there is absolutely no basis for any specific performance of both the said agreements. [*see p 261 para 70 - p 262 para 71*]

4. Following *Yong Lai Ling (p) v Ng Seow Poe & 2 Ors* [2014] 5 AMR 621, an undivided/joint owner of the land does not have locus standi to sue without joining the other joint owners. Hence, the plaintiffs, who have "equal share" in both Lots 4562 and 1448, without including STL and LSK who are also joint purchasers, have no locus standi to file the instant action especially so when they are seeking relief for all of the purchasers including the two non-party purchasers who had not consented to the plaintiffs representing them or acting on their behalf. On the facts and in the circumstances, the plaintiffs' claim for specific performance and all other relief is clearly unsustainable. [*see p 263 para 73 - p 264 para 79*]

Case(s) referred to by the court

Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd [1993] 2 AMR 1969; [1993] 3 MLJ 36, SC *(foll)*

Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 MLJ 400, SC *(foll)*

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 AMR 2871; [1995] 3 MLJ 331, FC *(ref)*

Catajaya Sdn Bhd v Shoppoint Sdn Bhd & 2 Ors [2021] 2 AMR 1; [2021] 3 CLJ 159, FC *(foll)*

Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd [2004] 6 AMR 429; [2004] 4 MLJ 259, HC *(ref)*

Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 AMR 4653; [1999] 4 MLJ 637, CA *(ref)*

Keng Huat Film Co Sdn Bhd v Makhanlall (Properties) Pte Ltd [1983] CLJ (Rep) 186; [1983] 1 MLRA 46, FC *(ref)*

Md Zohir Hanapi v Shell Malaysia Trading [2000] 8 CLJ 376, HC *(foll)*

Mohd Fariq Subramaniam v Naza Motor Trading Sdn Bhd [1998] 6 MLJ 193, HC *(foll)*

Raja Zainal Abidin b Raja Hj Tachik & 3 Ors v British-American Life & General Insurance Bhd [1993] 2 AMR 2073; [1993] 3 MLJ 16, SC *(ref)*

Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 2 AMR 795; [2016] 3 MLJ 1, FC *(foll)*

SPM Membrane Switch Sdn Bhd v Kerajaan Negeri Selangor [2015] AMEJ 1795; [2016] 1 CLJ 177, FC *(foll)*
Suppuletchimi a/p Karpaya v Palmco Bina Sdn Bhd [1994] 2 AMR 1191; [1994] 2 MLJ 368, HC *(foll)*
Tindok Besar Estate Sdn Bhd v Tinjar Co [1979] 2 MLJ 229, FC *(ref)*
Tractors Malaysia Bhd v Tio Chee Hing [1975] 2 MLJ 1, PC *(foll)*
Vong Lam Foong & Anor v BJ Homes Development Sdn Bhd [2019] MLRHU 1197, HC *(dist)*
Yamamori (Hong Kong) Ltd v Davidson & Ors [1992] 2 MLJ 410, HC *(ref)*
Yeo Long Seng v Lucky Park (Pte) Ltd [1971] 1 MLJ 20, HC *(ref)*
Yong Lai Ling (p) v Ng Seow Poe & 2 Ors [2014] 5 AMR 621; [2015] 8 MLJ 351, HC *(foll)*

Legislation referred to by the court

Malaysia
Rules of Court 2012, Order 18 r 19, 19(1)
Specific Relief Act 1950, s 20(1)(a)

Other references

Chitty on Contract (General Principle)

Solicitors

Tang Kee Cheong (Lee & Lim) for plaintiffs
Justin Voon Tiam Yu and *Christina Chin Tee Shan* (Justin Voon Chooi & Wing) for defendant

Judgment received: July 22, 2021

John Lee Kien How @ Mohd Johan Lee JC

(Enclosure 7 – striking out application filed by the defendant)

Introduction

[1] The plaintiffs are three out of five of the collective purchasers under the following sale and purchase agreements respectively:

a) Sale and purchase agreement dated February 24, 2016 ("SPA Lot 4562") for a piece of land known as Pajakan Mukim 240, Lot 4562, Mukim Hulu Langat, Kampung Sungai Tekali, Daerah Hulu Langat, Negeri Selangor ("Lot 4562") for a sum of RM1.5 million ("Lot 4562's purchase price"); and

b) Sale and purchase agreement dated June 29, 2016 ("SPA Lot 1448") for half (½) share of a piece of land known as Geran 27808, Lot 1448, Mukim dan Daerah Ulu Langat ("Lot 1448") at the price of RM3.0 million ("Lot 1448's purchase price").

[2] The said SPA Lot 4562 and SPA Lot 1448 were both respectively purchased by five purchasers jointly, namely, the plaintiffs and the other two co-purchasers, Soo Teck Lee ("STL") and Lim Siew Kien ("LSK") (collectively, "the purchasers"). The vendor for both these two pieces of land was the defendant. STL and LSK did not involve themselves in the filing of this action against the defendant. Neither were them made the co-defendants in this case. Lot 4562's purchase price and Lot 1448's purchase price were later paid by the purchasers.

Lot 4562

[3] On or about October 2017, the purchasers and the defendant reached an agreement where the purchasers would return the title of Lot 4562 to the defendant and the defendant to return Lot 4562's purchase price to the purchasers.

[4] On October 16, 2017, the purchasers issued the following two letters vide Messrs Lee & Lim:

a) A cover letter which enclosed and returned inter alia the issue document of title of Lot 4562 to the defendant; and

b) A letter entitled "termination of sale" in relation to Lot 4562.

[5] Lot 4562 later formed part of the subject matter of another suit under Kuala Lumpur High Court Suit No. WA-22NCvC-122-03/2018 ("Suit 122"). In Suit 122, based on a consent order dated June 13, 2018, the defendant has been ordered to transfer Lot 4562 to Ang Kim Kok and Chong Kuen Yin or their nominee.

Lot 1448

[6] In view of the existence of a registrar caveat and a private caveat over Lot 1448, the purchasers and the vendor had agreed to terminate SPA Lot 1448 in early 2018 and that Lot 1448's purchase price must be returned to the purchasers.

[7] Due to the defendant's failure to return Lot 4562's purchase price and Lot 1448's purchase price, the plaintiffs accordingly initiated this action for specific performance of both sale and purchase agreements against the defendant in order to obtain the titles to both lands.

[8] In the statements of claim, the plaintiffs claimed for the following:

31.1 Berkenaan dengan Hartanah 4562 tersebut:

a) Suatu deklarasi bahawa Perjanjian Jualbeli 4562 tersebut adalah sah;

b) Suatu perintah perlaksanaan spesifik Perjanjian Jualbeli 4562 tersebut terhadap Defendan;

c) Suatu perintah injunksi mengarahkan Defendan dan/atau pengarah-pengarah Defendan untuk menandatangani segala dokumen bagi membolehkan pindah milik Hartanah 4562 tersebut dilaksanakan dengan sempurnanya kepada atas nama Pembeli.

31.2 Berkenaan dengan Hartanah 1448 tersebut:

a) Suatu deklarasi bahawa Perjanjian Jualbeli 1448 tersebut adalah sah;

b) Suatu perintah perlaksanaan spesifik Perjanjian Jualbeli 1448 tersebut terhadap Defendan;

c) Suatu perintah injunksi mengarahkan Defendan dan/atau pengarah-pengarah Defendan untuk menandatangani segala dokumen bagi membolehkan pindah milik Hartanah 1448 tersebut dilaksanakan dengan sempurnanya kepada atas nama Pembeli.

[9] The defendant then filed encl 7 to strike out the plaintiffs' statements of claim.

[10] At the conclusion of the submission, I find in favour of the defendant that the plaintiffs' claims are unsustainable. Hence, I struck out the statements of claim and dismissed the plaintiffs' claims with costs.

[11] Dissatisfied with my decision above said, the plaintiffs appealed. I allowed the defendant's application to strike out the plaintiff's statements of claim ("SOC") on the following grounds.

The plaintiffs' submission

[12] The plaintiffs submitted that the burden was on the defendant to prove that the SOC is *obviously unsustainable.* The defendant's application was done on the following grounds:

a) The plaintiffs neither had rights nor locus to file this action against the defendant without the consent of STL and LSK;

b) No basis for specific performance; and

c) There was a consent order.

[13] The plaintiffs denied that they did not have the rights and locus to initiate this legal proceeding against the defendant. They relied on *Recitals C* of SPA Lot 4562 and SPA Lot 1448 as follows:

> The Vendor has agreed to sell and the Purchaser has agreed to purchase the Property in *equal share* with vacant possession subject to the terms and conditions hereinafter contained. (Emphasis added by the plaintiffs.)

[14] It is the plaintiffs' submission that the plaintiffs at all material times have their rights on Lot 4562 and Lot 1448 in equal shares and as such, the plaintiffs do have locus to initiate this legal proceeding against the defendant to claim their rights on Lot 4562 and Lot 1448.

[15] Furthermore, the plaintiffs stated that STL and LSK were in the midst of appointing solicitors to represent them in securing their interest on Lot 4562 and Lot 1448.

[16] Therefore, the plaintiffs submitted that they do have the rights and locus to initiate this action and to seek for the reliefs in this case.

[17] With regard to the defendant's submission that the plaintiffs had no basis for specific performance on the sole ground that the SPAs have been terminated, the plaintiff argued that the SPAs have yet to be terminated due to the defendant's own failure to refund the money.

[18] The plaintiffs referred the court to the termination letter and stressed that the termination letter clearly showed that:

a) The termination of the sale of Lot 4562 was at the request of the defendant; and

b) The termination took effect upon the defendant paying RM1,500,000.00 to the plaintiffs, STL and LSK.

[19] Up till the hearing of encl 7, the defendant has yet to pay RM1,500,000.00 to the plaintiffs, STL and LSK. Thus, the plaintiffs submitted that the termination never took place. As such, the sale on Lot 4562 subsisted and the plaintiffs have all the basis to claim for specific performance of the SPAs.

[20] The plaintiffs then relied on the case of the case of *Keng Huat Film Co Sdn Bhd v Makhanlall (Properties) Pte Ltd* [1983] CLJ (Rep) 186; [1983] 1 MLRA 46 and argued that the defendant is barred from denying a documentary evidence. In that case, the Federal Court at p 193 (CLJ); p 52 (MLRA) held that:

> Section 91 provides that the contents of a document must be proved by the document itself and s 92 provides that subject to certain provisos, no evidence of

> any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding to, or subtracting from its terms.

[21] Since the termination of the sale of Lot 4562 was at the request of the defendant and the defendant had failed to perform the condition for the termination, the plaintiffs do not approbate and reprobate. Therefore, the plaintiffs were not estopped to file this action.

[22] The plaintiffs further premises that together with STL and LSK, the plaintiffs returned the title of Lot 4562 on a goodwill basis. Yet, the defendant had failed and/or refused to fulfil the refund.

[23] As for the issue regarding lack of legal capacity, the plaintiffs contended that such issue was not sufficient to strike out the plaintiffs' case. Rather, such issue warrants an issue to be tried. The plaintiffs relied on the case of *Vong Lam Foong & Anor v BJ Homes Development Sdn Bhd* [2019] MLRHU 1197. In this case, it was held that failure of the plaintiff to name the co-owner of a property in the suit does not warrant the court to strike out the plaintiff's case. Justice Ahmad Bache held at p 10 as follows:

> [53] It further begs the question as to whether the first plaintiff lacks the legal standing and/or capacity to bring an action for himself because he has failed to name the co-owner of the property and that whether the first and second plaintiffs are collectively incompetent to maintain a class action against the defendant.
>
> [54] Again this court found that these are issues that warrant this court not to strike out the plaintiffs' claim as this is not a plain and obvious case to warrant the same. Witnesses have to be called to ventilate the issues at hand (see *Sivarasa Rasiah* (supra)). Hence, the defendant's application to strike out the plaintiffs' claim was dismissed.

[24] By adopting *Voon Lam Foong* (supra) above, the plaintiffs argued that the issue of STL and LSK not participating in this suit should not be a reason to strike out the plaintiffs' case as STL and LSK ought to be called as witness to give evidence.

The defendant's submission

[25] By relying on the authority of *Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd* [1993] 2 AMR 1969; [1993] 3 MLJ 36, the defendant submitted that this is a direct, plain, and obvious case to be struck out. The defendant's submissions were premised mainly on inter alia the following salient points:

(a) The plaintiffs did not have any legal right/standing nor locus to file the present suit as the present suit is only filed by part of the plaintiffs

being three out of five of the collective purchasers under SPA Lot 4562 and SPA Lot 1448;

(b) The other two co-purchasers, i.e., STL and LSK clearly did not give the consent to the filing of the present suit. The said SPA Lot 4562 and SPA Lot 1448 were both respectively jointly purchased by all five purchasers, and it was simply not possible for three out of five purchasers to claim for specific performance;

(c) The plaintiffs' claims including its relief were for specific performance and/or other relief based on such specific performance of SPA Lot 4562 and SPA Lot 1448 which were purportedly valid or not terminated. However, the defendant stressed that there was no basis for any specific performance and other relief of SPA Lot 4562 and SPA Lot 1448 as prayed for by the plaintiffs because the purchasers namely, the plaintiffs together with STL and LSK had terminated both SPA Lot 4562 and SPA Lot 1448; and

(d) After having elected to terminate SPA Lot 4562 and SPA Lot 1448, the plaintiffs were estopped from filing the present suit. The plaintiffs cannot approbate and reprobate at the same time.

[26] The defendant further referred to inter alia p 1 of SPA Lot 4562 [exh "1" at p 12 of the affidavit in support by defendant's director ("AIS")] and p 1 of SPA Lot 1448 [exh "2" at p 27 of AIS] respectively. In both of these agreements (Recital C in SPA Lot 4562 and Recital D in SPA Lot 1448), the plaintiffs, together with STL and LSK were collectively referred to as "*the Purchaser*" and both SPA Lot 4562 and SPA Lot 1448 were for *the purchaser to purchase Lot 4562 and 50% of Lot 1448 respectively in equal share.* (Emphasis added by the defendant.)

[27] In other words, both SPA Lot 4562 and SPA Lot 1448 involve five (5) co-purchasers who wish to jointly purchase one (1) whole piece of land, i.e., Lot 4562 and half (½) share of Lot 1448 from the vendor/defendant. Yet, the present suit was only commenced by the plaintiffs without involving STL and LSK. This, to the defendant, clearly warrants the striking out of the case.

[28] It is the defendant's case that, as joint "purchasers", any claim for specific performance under SPA Lot 4562 and SPA Lot 1448 respectively ought to be jointly filed by all the "purchasers" which made up of the plaintiffs plus STL and LSK. In this regard, the defendant submitted that the plaintiffs alone do not have the locus standi to initiate the present proceeding as the interests under SPA Lot 4562 and SPA Lot 1448 are undivided/joint between the plaintiffs plus STL and LSK.

[29] The defendant argued that the plaintiffs could not obtain the consent from STL and LSK, i.e., the other co-purchasers to initiate the present suit and the plaintiffs' solicitors clearly did not represent STL and LSK in our present case.

[30] This is further corroborated by the plaintiffs' own averment inter alia at paragraph 8 of the affidavit in reply affirmed by the first plaintiff ("P1's AIR") where the plaintiffs averred that STL and LSK are purportedly "*in the process of appointing solicitors of their own to safeguard their interests*" [paragraph 8 of P1's AIR at p 3].

[31] The defendant then contended that there was no basis for any specific performance, injunction nor other relief based on SPA Lot 4562 and SPA Lot 1448.

[32] Through the letter issued by the plaintiffs' solicitor dated October 16, 2017, the defendant submitted that, SPA Lot 4562 had already been terminated by the purchasers. This coupled with the active act of the purchasers (namely, the plaintiffs together with STL and LSK) in returning inter alia the issue document of title to Lot 4562 to the defendant clearly corroborates the defendant's case that the entire suit by the plaintiffs which based on SPA Lot 4562 and for any alleged specific performance, is plainly wrong, mala fide and obviously unsustainable.

[33] The defendant was of the view that the present suit was filed belatedly and by way of an afterthought. The plaintiffs do not have rights for any specific performance.

[34] Flowing from the aforesaid, the defendant emphasised that the whole pleaded suit by the plaintiffs including the relief in the statement of claim was based on the validity of SPA Lot 4562 and specific performance of SPA Lot 1448.

[35] For this the defendant quoted the authorities of s 20(1)(a) of the Specific Relief Act 1950 and the case of *Yeo Long Seng v Lucky Park (Pte) Limited* [1971] 1 MLJ 20. The defendant also quoted the case of *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd* [2004] 6 AMR 429 at 441; [2004] 4 MLJ 259 at 270 and highlighted that once damages is an adequate relief, there is no basis for any specific performance or for any caveat to be entered.

[36] For Lot 1448, it is the defendant's submission that the plaintiffs themselves had in paragraph 24 of the statement of claim took the stand that SPA Lot 1448 has been "terminated" as well. The plaintiffs cannot rely on a sale and purchase agreement which has been terminated for the purposes of the present proceeding herein.

[37] As for the purported "condition" or "agreement" in regard to Lot 1448 and/or SPA Lot 1448 raised by the plaintiffs, the defendant submitted that all rights for specific performance of SPA Lot 1448 have been abandoned by the plaintiffs when the purchasers "terminated" SPA Lot 1448. The defendant submitted that the plaintiffs cannot blow hot and cold at the same time where they on one hand admitted that SPA Lot 1448 has been "terminated", but on the other hand seek a declaration that SPA Lot 1448 is valid and enforceable.

[38] Besides, having elected that SPA Lot 4562 and SPA Lot 1448 be terminated, the defendant premised that the plaintiffs (as well as STL and LSK) are estopped from commencing the present proceeding against the defendant in regard to the validity of SPA Lot 4562 and SPA Lot 1448 and/or for any purported specific performance of the same. Both SPA Lot 4562 and SPA Lot 1448 have been terminated and no longer enforceable.

[39] Again, the defendant submitted that the plaintiffs cannot approbate and reprobate at the same time. This is as per the ratio in *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Berhad* [1995] 3 AMR 2871 at 2891; [1995] 3 MLJ 331 at 345 where the Federal Court held that:

> When the parties to a transaction proceed on the basis of an underlying assumption – either of fact or of law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[40] Also, the defendant cited the authority of *Yamamori (Hong Kong) Ltd v Davidson & Ors* [1992] 2 MLJ 410, at 418. In this case, the court held that:

> This elementary rule of logic, which is frequently applied in the defendant's courts of justice, will receive occasional illustration in the course of this work. The defendant may for the present observe that it expresses, in other language, the trite saying of Lord Kenyon, that a man shall not be permitted to "blow hot and cold" with reference to the same transaction, or insist, at different times, on the truth of each of two conflicting allegations, according to the promptings of his private interest.

[41] The defendant submitted that the reason the other two of the purchasers (i.e. STL and LSK) refused to join this suit was because all the purchasers had already taken the stand to terminate SPA Lot 4562 and SPA Lot 1448. Therefore, the present suit simply cannot stand and encl 7 ought to be allowed by this court.

[42] The defendant also imposed that the present suit was filed by the plaintiffs by way of an afterthought to exert unnecessary pressure on the

defendant. This is tantamount to an abuse of court's process. Quoting the authority of *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 AMR 4653 at 4662; [1999] 4 MLJ 637 at 645-646, the defendant submitted that the categories of abuse of process of the court are never closed. And this present case is indeed an instance of abuse of process of the court. As decided by the Supreme Court in *Raja Zainal Abidin bin Raja Hj Tachik & 3 Ors v British-American Life & General Insurance Berhad* [1993] 2 AMR 2073; [1993] 3 MLJ 16 that this court has an inherent jurisdiction to prevent an abuse of its process.

[43] Also, the defendant submitted that specific performance of only 3/5 portion of the subject lands tantamount to an attempt to rewrite the sale and purchase agreement to enable a "partial purchase" of Lot 4562 and Lot 1448 and this is not permissible under law. The defendant refer to the case of *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229, at 233:

> It is not the case of the respondent that any of the provisos to s 92, except possibly proviso (a), applies. Its contention therefore for the admission of the parol evidence which won the approval of the learned judge was that not all the terms had been incorporated in the agreement. If this contention so generally stated and understood had any foundation at law, then it would be open to any party to a litigation concerning an agreement to say that the agreement which is the subject matter of the dispute, did not contain all the terms thereof and to seek to introduce such terms or even terms which might not even have been within the contemplation of the other party. No agreement would then be safe from being re-written by one party in a court of law. I think and I say so with respect, the fundamental mistake made by the learned judge is to conclude simply and without qualification that s 92 applies only to a case where all the terms of the agreement have been reduced to writing. But that is not what s 92 says. It merely says "where the terms ..." and by referring back to s 91, *it means where the terms of a contract have been reduced to writing, as in this particular agreement they had been, the contract could only be proved by the document itself, and it is not open to the respondent to seek to introduce and the judge to admit evidence that would, inter alia, add new terms to it.* (Emphasis added.)

[44] Moreover, here in this case, the plaintiffs were asking for specific performance on the entire share of Lot 4562 plus the entire half share of Lot 1448, which includes STL and LSK's portion of the said lands. However, the plaintiffs have deliberately excluded STL and LSK here in the present proceeding. While the plaintiffs themselves, in inter alia clauses 6.5, 6.7, 8.5 and/or 8.7 of the statement of claim respectively acknowledged that "*Pembeli*" (purchaser which includes the plaintiffs plus STL and LSK) were jointly "entitled" to lodge caveat and/or ask for specific performance of SPA Lot 4562 and SPA Lot 1448, the plaintiffs had failed to furnish any credible evidence to prove that they have been authorised and/or mandated by STL and LSK to claim on their behalf herein.

1 **[45]** On this ground alone, the defendant submits that the plaintiffs' claim ought to be dismissed in limine.

Findings and decision of the court

5 **[46]** After having appraised the facts adduced by both the parties through affidavits and the exhibits, and after having considered the submissions by the learned counsels for both sides, I find that the plaintiffs have failed to convince the court that the claim is sustainable. My decision is based on the
10 following findings.

The law on Order 18 r 19 Rules of Court 2012

15 **[47]** The principles upon which the court acts in exercising its power dealing with an application filed under Order 18 r 19(1) Rules of Court 2012 are well settled. In general, the courts will only do so when the case is clearly unsustainable.

20 **[48]** In an earlier Malaysian case of the Privy Council, Lord Diplock in delivering the judgment of the Board in *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1 held at paragraph 3 of p 1:

25 > The power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with utmost caution. ... In refusing to submit the evidence to critical examination, however, the Federal Court erred in law.

30 **[49]** Locally, we have the landmark ratio of Mohamed Dzaiddin SCJ of the Supreme Court in *Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd* [1993] 2 AMR 1969; [1993] 3 MLJ 36, who held at
35 p 1975 (AMR); p 43 (MLJ) that:

> The principles upon which the court acts in exercising its power under any of the four limbs of Order 18 r 19(1) of Rules of the High Court are well settled. It is only in plain and obvious cases that recourse should be had to the summary process
40 under this rule (per Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd* [1899] 1 QB 86), and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable" (see *Attorney General of the Duchy of Lancaster v London & North Western Railway Co* [1892] 3 Ch 274 at 277). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney & Ors* [1965] 1 WLR 1238). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under Order 33 r 3 (which is in pari materia with the plaintiffs' Order 33 r 2 of the RHC) (see *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd* [1899] 1 QB 86). The court must be satisfied that there is no reasonable cause of

action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[50] Also, in a later case of the Federal Court in *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 2 AMR 795; [2016] 3 MLJ 1 the position was detailed out when the court held at pp 805-806 (AMR); pp 15-16 (MLJ):

> [25] It is only in a plain and obvious case that recourse should be had to the summary process under this rule; and this summary process can only be adopted when it can clearly be seen that a claim on the face of it is obviously unsustainable (see *Bandar Builder*; *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86; *Attorney General of the Duchy of Lancaster v London & North Western Railway Co* [1892] 3 Ch 274).
>
> [26] The tests for striking out application under Order 18 r 19 of the ROC, as adopted by the Supreme Court in *Bandar Builder* are, inter alia, as follows:
>
> (a) it is only in plain and obvious cases that recourse should be had to the summary process under the rule;
>
> (b) this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it "*obviously unsustainable*" (emphasis added);
>
> (c) it cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence; and
>
> (d) if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under Order 33 r 3 of the ROC; and
>
> (e) the court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.
>
> [27] The Court of Appeal, in *Sivarasa Rasiah* & 5 *Ors v Che Hamzah Che Ismail & 3 Ors* [2012] 1 AMR 20; [2012] 1 MLJ 473, had adopted the well settled principle of striking out in the following passage:
>
> > "A striking out order should not be made summarily by the court if there is issue of law that requires lengthy argument and mature consideration. It should also not be made if there is issue of fact that is capable of resolution only after taking viva voce evidence during trial (see *Lai Yoke Ngan (p) & Anor v Chin Teck Kwee @ Chin Teck Kwi & Anor* [1997] 3 AMR 2458; [1997] 2 MLJ 565 (Federal Court) ..."

[28] The basic test for striking out as laid down by the Supreme Court in *Bandar Builder* is that the claim on the face of it must be "obviously unsustainable". The stress is not only on the word "unsustainable" but also on the word "obviously" i.e., the degree of unsustainability must appear on the face of the claim without having to go into lengthy and mature consideration in detail. If one has to go into lengthy and mature consideration in detail of the issues of law and/or fact, then the matter is not appropriate to be struck out summarily. It must be determined at trial.

[29] The established rule on this point is that the court should not examine the evidence in this summary proceedings in such a way as to amount to conducting a trial on the conflicting affidavit evidence. As rightly said by Lord Diplock in the House of Lords in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 at 407:

> "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried."

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial ...

[51] All these cases clearly elaborate Order 18 r 19(1) that the courts will not hesitate to strike out the claim if the court found that the case discloses no reasonable cause of action or if it is scandalous, frivolous, or vexatious or if it may prejudice, embarrass, or delay the fair trial of the action or if it is an abuse of the process of the court. The courts however would only do so in extreme cautiousness.

[52] After examining the facts of the case, I find that the present case is indeed one of the cases where the plaintiffs do not disclose any reasonable cause of action. The claim is obviously unsustainable in our present case. While I have to caution myself against such drastic decision, the facts of the case and the face of the claim obviously evidencing the degree of unsustainability without having to go into lengthy and mature consideration in detail.

[53] In the application for the striking out the defendant has adduced numerous affidavits in support of their notion. Likewise, some of the plaintiffs affirmed their affidavit in reply to counter. It is trite law that allegation in the affidavit, which is equivocal, lacking in precision and/or inherently improbable is itself ought to be rejected by the court. This is as held in the leading authority of *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400, at 408.

[54] As can be seen in the case of *Suppuletchimi a/p Karpaya v Palmco Bina Sdn Bhd* [1994] 2 AMR 1191 at 1205-1206; [1994] 2 MLJ 368 at 382, for a striking out application prima facie evidence which can be produced ought to be produced and bare allegations would not be accepted.

[55] Our present case is a case where notwithstanding that proper sale and purchase agreements were executed by the parties, the completion of both transactions could not materialise. The parties then terminated both SPA Lot 4562 and SPA 1448. This is undisputed. However, the parties took different stances with regard to the termination when the vendor fails to refund the purchase price to the purchasers. The plaintiffs argued that the termination was subjected to the refund. When there is no refund, the termination is void and the parties are back to their original position. Henceforth, the original SPAs still stand. The defendant, however, takes the view that the termination is not conditional upon the refund. It is unequivocal notwithstanding the none refund of the money. The content of the termination letter and the conduct of the parties in our present case are in favour of the latter.

[56] Two letters dated October 16, 2017 were issued by the purchasers regarding the termination of Lot 4562 as well as the averment by the plaintiffs in their affidavit in reply regarding the termination of Lot 1448 have confirmed that the sale transactions for both lands were terminated. What is lacking is the refund by the defendant. When the defendant fails to refund, the available cause of action for the purchasers is to sue the defendant/vendor for the refund namely, for the money. If any, the specific performance should be sought for the money and not the lands. The specific performance should be prayed under the termination and not under the sale.

[57] For Lot 4562, the clear letter entitled "Termination of Sale" has said it completely. The letter issued and signed by the purchasers said:

> 2. At your request to terminate the sale of the above property and in consideration of you paying the sum of RM1,500,000-00, I/we hereby agree that the sale of the above Property be terminated with immediate effect upon the receipt of the sum of RM1,500,000-00.

[58] While the wordings of this paragraph seem to be clear with regard to the termination "with immediate effect", the subsequent phrase "upon the receipt of the sum of RM1,500,000-00" caused different interpretation between the parties. To confirm the better interpretation of this and to know the intention of the signatories to these documents, the factual matrix of the case must be considered by this court.

1 **[59]** Toward this end, this court is guided by the recent ratio of Hasnah Hashim FCJ in *Catajaya Sdn Bhd v Shoppoint Sdn Bhd & 2 Ors* [2021] 2 AMR 1 at 25; [2021] 3 CLJ 159 at 184-185 that:

5 > [65] In interpreting a clause in an agreement, it is pertinent to take into consideration the context of the agreement as a whole, to examine the relevant clauses in detail and to consider the relevant factual matrix to give guidance as to the true intent of the parties. When one has to choose between two rival interpretations, the one which made more commercial sense should be preferred
10 if the natural meaning of the words were unclear. In this case, the provisions of the SSA are clear and unambiguous. The appellant has paid a substantial sum as deposit for the purchase of the shares and the land; therefore, it makes commercial sense that the appellant be given the opportunity to rectify the purported breach
15 as envisaged under s 12 of the SSA. The parties were still negotiating despite the issuance of the notice of termination. Lord Hodge in *Wood (respondent) v Capita Insurance Services Limited (appellant)* [2017] UKSC 24 summarised the court's task in the construction of the terms of a contract:
>
20
>> "[10] The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract
25 as a whole and, depending on the nature, formality, and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. In *Pram v Simmonds* [1971] 1 WLR 1381 (1383H-1385D) and in *Reardon Smith Line Ltd v Yngvar*
30 *Hansen-Tangen* [1976] 1 WLR 989 (997), Lord Wilberforce affirmed the potential relevance to the task of interpreting the parties' contract of the factual background known to the parties at or before the date of the contract, excluding evidence of the prior negotiations. When in his celebrated judgment
35 in *Investors Compensation Scheme Ltd v West Bromwich Building Society (No. 1)* [1998] 1 WLR 896 Lord Hoffmann (pp 912-913) reformulated the principles of contractual interpretation, some saw his second principle, which allowed consideration of the whole relevant factual background available to the
40 parties at the time of the contract, as signalling a break with the past. But Lord Bingham in an extra-judicial writing, "A New Thing Under The Sun? The Interpretation Of Contracts And The ICS Decision" Edin LR Vol 12, 374-390, persuasively demonstrated that the idea of the court putting itself in the shoes of the contracting parties had a long pedigree."
>
> [66] For the reasons adverted to above, we take the view that termination clause in an agreement ought to be construed strictly. In light of the foregoing, the first question must be answered in the positive.

[60] Also, in another Federal Court decision of *SPM Membrane Switch Sdn Bhd v Kerajaan Negeri Selangor* [2015] AMEJ 1795 at pp 29-30; [2016] 1 CLJ 177 at 198, it is clear to us that:

> [45] As a relevant addendum, the relationship between interpretation and implication are considered in this discussion of the principles of construction. According to Lord Hoffmann in *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10; [2009] 1 WLR 1988, PC this characterisation can be traced back to the speech of Lord Pearson in *Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board* [1973] 1 WLR 601, HL, where his Lordship had warned:
>
>> "The court does not make a contract for the parties. The court will not even improve the terms which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been suitable. An unexpressed term can be implied if and only if courts finds that the parties must have intended that term to form part of their contract."

[61] Thus, to confirm the better interpretation of this, the conduct of the parties pertinent to this "termination of sale" letter is crucial. From the affidavit evidence adduced, it is clear to me that the intention of the parties is to terminate the sale immediately. The refund was to be made after. This can be seen through the return of the title to the vendor unconditionally in the letter issued by the purchasers' solicitors. In that letter, the solicitors stated that:

> We enclose herewith the following documents for your further action:
>
>> Issue Document of title to the property with the memorial of registration of the Vendor's interest as the registered owner thereof (Borang 5Ek & B1 both dated 02.08.2011).

[62] Now, the letter and the return are unconditional and without any undertaking to refund the sum of RM1,500,000-00. Should the termination be conditional upon the refund of the RM1,500,000-00, the return of such crucial documents ("the title documents") would logically and in conveyancing practice, be held subject to the refund pending of which these documents would be held by the solicitors as stakeholder. Alternatively, the purchasers could return the title documents to the vendor imposing an undertaking to refund the sum of RM1,500,000-00 within certain period of time. Neither of these took place. What transpired was the termination and the unequivocal and unconditional return of the title documents. If the return of the title documents was done on condition of the refund, nothing has been done to

suggest so. No document nor action has been performed to confirm such "subject to" approach. As stated above, the documents and the conduct of the cause are all in line with the submission by the defendant that the sale of Lot 4562 has been terminated immediately on the day the letter was issued. Thus, the return of the title documents. Neither is there any document nor conduct to support the averment by the plaintiffs that the return of the title documents was one goodwill basis.

[63] The plaintiffs' submission that there was a "condition" or "agreement" to the said termination letter that SPA Lot 4562 was only terminated when such monies have been refunded does not hold water here. I agree with the defendant's submission that such argument is "inherently, unlawful, equivocal and/or contradict with contemporaneous documents" for the following reasons:

(a) Such "condition" or "agreement" which was vague, equivocal and a bare allegation was never agreed upon by the defendant;

(b) The plaintiffs failed to show any credible prima facie evidence to support such allegation including any document, letter nor email referring to such "condition" or "agreement";

(c) There are simply no contemporaneous documents and no letter/email etc. from the plaintiffs from October 16, 2017 which referred to or confirmed such alleged "condition/agreement";

(d) lf indeed there was no termination by the plaintiffs and/or such "condition" did exist (which were both denied by the defendant), the defendant submitted that the plaintiffs (as well as STL and LSK) would not have returned the issue document of title of Lot 4562 to the defendant until such "condition" or "agreement" (if any, which is denied) is fulfilled by the defendant. This, to the defendant showed that the plaintiffs' stand is inherently improbable in itself.

[64] In fact, the letter dated October 16, 2017 was issued by the purchasers themselves to terminate SPA Lot 4562. As mentioned earlier, the content of the letter clearly confirmed that the termination was absolute when it said:

> At your request to terminate the sale of the above property and in consideration of you paying the sum of RM1,500,000-00, I/we hereby agree that the sale of the above Property be terminated with immediate effect ...

[65] Nothing in this express declaration made the termination conditional upon the refund of Lot 4562's purchase price. Also, the subsequent return of all the title documents to the vendor/defendant further confirmed this. If

ever, the termination is conditional upon the refund, the title documents would not have been returned to the vendor/defendant. The positive act confirmed the conclusion by this court that the termination was unconditional. No doubt the vendor/defendant has failed to refund after that. What the purchasers have to do is to sue for the refund of Lot 4562's purchase price namely, to seek the court's assistance in recovering the money payable to them under the termination arrangement and obtain the refund. Instead, the plaintiffs, having terminated the SPA Lot 4562, and returned all the title documents to the vendor/defendant, now ask this court to assist them in forcing the vendor/defendant to perform the obligation under the terminated contract. How could the contract be further performed if it has already been terminated? The real dispute is the payment of the refund which confirms the stand taken by this court: that this is a case where damages is an adequate remedy. It thus is trite law that when damages are an adequate remedy, specific performance cannot be granted by the court.

[66] The court is guided by the ratio of the leading case of *Mohd Fariq Subramaniam v Naza Motor Trading Sdn Bhd* [1998] 6 MLJ 193 where James Foong J referred to *Chitty on Contract (General Principle)* and held that the jurisdiction for a court to order specific performance built on the existence of a valid enforceable contract. The fundamental rule is straight forward: without any enforceable contract, there is nothing to be specifically enforced. When the contract has been terminated as in our present case, it is obvious to me that, the relief of specific performance is no more available.

[67] Similarly, in the case of *Md Zohir Hanapi v Shell Malaysia Trading* [2000] 8 CLJ 376, Alauddin J (as he then was) held that the Shell retailer license agreement had been terminated prior to the filing of the writ summons. Hence, it was no more in existence. As such, the plaintiff in that case had no right to seek for it to be specifically performed (p 384, paragraph b). It is therefore trite that when an agreement has been terminated previously, none of the parties could later come to the court and asking for specific performance. When the contract is no more in existence due to the prior termination, there is nothing under the contract for the court to order for such specific performance. If at all, the plaintiffs should first seek for a declaration that the termination was invalid and that the contract is legally still valid, binding, and enforceable. Then only, would the court be able to proceed to consider the application for specific performance. Without any such declaration as in our present case, the termination stands. Naturally, therefore the SPAs to both lands are no more in existence at the time the plaintiffs initiated this action. They do not have any cause of action against the defendant to seek for specific performance and all other similar reliefs prayed for in our present case.

[68] A similar situation applied to Lot 1448. There was no claim for damages pleaded in the statement of claim based on any breach of SPA Lot 1448. In any event, when the plaintiffs claimed that there was a "condition" or "agreement" for repayment of the sale price, the dispute is for the payment of the money. Thus, (again) damages (if any) is an adequate remedy. Obviously, this again falls into the notion that when damages are an adequate remedy, specific performance cannot be granted by the court.

[69] To sum up on this issue, even if there was a "condition" attached to such termination i.e., that the defendant to purportedly repay a certain sum to all the five co-purchasers, this court agrees with the defendant's submission that this clearly showed that damages would be an adequate remedy and that Lot 4562 and/or Lot 1448 are purely commercial properties which are of no sentimental value to the co-purchasers, including to the plaintiffs. It is obvious that the plaintiffs would not mind losing Lot 4562 and Lot 1448 for money. Thus, the plaintiffs' recourse (if any), ought to be damages (which can be quantified) and not specific performance like the present proceeding.

[70] Besides, by his own admission, the first plaintiff has averred in his affidavit in reply dated June 29, 2020 that the SPA for Lot 1448 has been terminated (paragraph 9(viii) of the first defendant affidavit). No document has been executed by the parties for the termination of Lot 1448 simply because the title documents were with a third-party financier, UOB Bank Berhad who was also the chargee to Lot 1448. Also, the existence of a private caveat by a third party and a registrar caveat hindered the transfer of proprietorship to the purchasers. Again, it is undeniable that the termination was done notwithstanding the refund has yet to be done. To support the contention of the defendant that both SPA Lot 4562 and SPA Lot 1448 have been terminated notwithstanding the non-refund of Lot 4562's purchase price and Lot 1448's purchase price, the defendant then adduced an affidavit by one of the two purchasers who are not parties to this suit: STL. This affidavit was affirmed by STL on behalf of himself and LSK on September 28, 2020 ("STL's affidavit"). In this affidavit, inter alia the following were affirmed by STL:

(a) Due to the caveat entered upon Lot 1448, parties had entered into inter alia SPA Lot 4562 as "security" for SPA Lot 1448 [paragraphs 11 and 17 of STL's affidavit].

(b) Messrs Lee & Lim prepared the sale and purchase agreements for Lot 4562, Lot 1448 and three other pieces of land for the execution by the plaintiffs, STL, LSK, the defendant, and two other persons namely, Lim Geok Kim and Yap Kim Hin respectively. These agreements were never intended to be enforceable by any parties

and/or were not real agreements [see paragraphs 12 and 17 of STL's affidavit at pp 17-18].

(c) Thereafter, STL and LSK voluntarily signed inter alia the letter entitled "*termination of sale*" dated October 16, 2017 to "terminate" SPA Lot 4562 wherein the original copy of the issue document of title to Lot 4562 was also returned to the defendant following the same [paragraph 14 of STL's affidavit]. (Note that this termination of sale was executed by all the purchasers.)

(d) Around January 2020, the second plaintiff approached STL and LSK and requested for them to sign several documents for the purposes to apply for the replacement of original grants of title for inter alia Lot 4562 on the purported reason that the original grants of title were lost. However, STL and LSK refused to sign those documents because the said grants of title have already returned to the defendant vide Messrs Lee & Lim's letter dated October 16, 2017 [paragraphs 15 and 16 of STL's affidavit].

(e) As for Lot 1448, STL affirmed that SPA Lot 1448 was also invalid and unenforceable as it did not reflect the correct purchase price wherein the actual purchase price for Lot 1448 was RM10 million for 50% of Lot 1448 and not RM3 million as stipulated under SPA Lot 1448 [see paragraph 18 of STL's affidavit].

[71] STL's affidavit is crucial for the consideration to this court. His averments coming from a non-party to this case assist the court in interpreting the intention of the purchasers in the termination of the SPAs for both pieces of land. STL collaborates the defendant's case herein, i.e., that both SPA Lot 4562 and SPA Lot 1448 were terminated unconditionally and thus there was absolutely no basis for any specific performance for both sale transactions. If any, the purchasers should seek for the specific performance of the termination and claim for the refund for both the Lot 4562's purchase price and Lot 1448's purchase price. When, as in this case, the transactions have been terminated the contracts are no more in existence or effective. How could some of the parties later come to the court seeking for the any relief in particular the specific performance of the same? The contract has already been terminated!

[72] The weakest link in the plaintiffs' case is with regard to the inadequacy of the plaintiffs to seek for the prayers stated in the statements of claims. As submitted by the defendant, the plaintiffs do not have any locus to initiate this present proceeding asking the reliefs against the defendant, especially when two of the joint purchasers i.e., STL and LSK are not parties to this suit.

Bearing in mind, the relief sought in this case is for the purchasers, how could the contracts be specifically enforced for all the five of them when two of them are not agreeable? They are not even parties in our present suit!

[73] The court agrees with the reliance by the defendant on the case of *Yong Lai Ling (p) v Ng Seow Poe & 2 Ors* [2014] 5 AMR 621 at 631; [2015] 8 MLJ 351 at 363-364. The decision in *Yong Lai Ling*'s case is clear to us that an undivided/joint owner of the land does not have locus standi to sue without joining the other joint owners (paragraphs [41] through [44] of the case). The purchasers in our present case are for the "equal share" in both Lot 4562 and half of Lot 1448. Without joining the other two non-party purchasers, the plaintiffs here simply have no locus standi. This lack of capacity is especially so as in our present case when the plaintiffs are not asking the court to grant reliefs for themselves but rather asking reliefs for all the purchasers (including the two non-party purchasers).

[74] The court also distinguishes our present case with the decision of my learned brother Ahmad Bache J in the case of *Vong Lam Foong & Anor v BJ Homes Development Sdn Bhd* [2019] MLRHU 1197. In that case, the plaintiff has failed to name the co-owner of the property in the suit. Also, remedy sought was for the monetary damages. Hence, the decision in *Vong Lam Foong*.

[75] Our present case, on the other hand, is mainly a suit by the plaintiffs for specific performance for themselves *and* two other purchasers who are not parties to the suit. Neither do the two non-party purchasers consent for the three plaintiffs here to represent or to act on their behalf. Instead, one of the non-party purchasers (affirming on behalf of himself and the other non-party purchasers) has affirmed it in affidavit the fact that the sale transactions were indeed ineffective and terminated. In a nutshell, the two non-party purchasers are not in support of the action by the three plaintiffs here. Although the affidavit was not affirmed exclusively for this case, the content therein and the position taken by the two non-party purchasers concerning all the lands particularly Lot 4562 and Lot 1448 are directly related to our present case. When the plaintiffs here claim for all the reliefs on behalf of all the purchasers (including the two non-party purchasers), their claims are but defective for the obvious reason that they have no complete locus standi.

[76] It would be different if the plaintiffs here are seeking for relief on their own behalf in which case the non-involvement of the two non-party purchasers will not cause any issue. In such case, the court could just proceed to award all the relief for the plaintiffs ignoring the rights and entitlements of the non-party purchasers. In our present case, the two non-party purchasers not only are not parties to this suit, but also put it clearly that it has been their view that the contracts were non-effective and have been terminated. They

are not agreeable with the plaintiffs who are asking this court to grant relief for the purchasers (namely, all the five of them). How could the contracts be specifically enforced by the defendant for all the purchasers in such situation? The two non-party purchasers do not agree to the same! This is notwithstanding the plaintiffs asking for relief for all of them in their claim!

[77] In this regard, it is apt to note that both main prayers for specific performance and/or injunction in this suit are purportedly for the specific performance of the whole SPAs and for the transfer of the titles of both Lot 4562 and Lot 1448 to and for the benefit of all "*purchasers*"! This is simply not possible without STL and LSK's agreement nor participation. As stated in, inter alia, paragraphs 31.1(a), (b) and (e) [for Lot 4562] as well as paragraphs 31.2(a), (b) and (e) [for Lot 1448] of the statement of claim, the plaintiffs here are praying for the following reliefs:

> 31.1 Berkenaan dengan Hartanah 4562 tersebut:
>
> a) *Suatu deklarasi bahawa Perjanjian Jualbeli 4562 tersebut adalah sah*;
>
> b) *Suatu perintah perlaksanaan spesifik Perjanjian Jualbeli 4562 tersebut terhadap Defendan*;
>
> c) Suatu perintah injunksi mengarahkan Defendan dan/atau pengarah-pengarah Defendan untuk menandatangani segala dokumen bagi membolehkan pindah milik Hartanah 4562 tersebut dilaksanakan dengan sempurnanya kepada atas nama *Pembeli*.
>
> 31.2 Berkenaan dengan Hartanah 1448 tersebut:
>
> a) *Suatu deklarasi bahawa Perjanjian Jualbeli 1448 tersebut adalah sah*;
>
> b) *Suatu perintah perlaksanaan spesifik Perjanjian Jualbeli 1448 tersebut terhadap Defendan*;
>
> c) Suatu perintah injunksi mengarahkan Defendan dan/atau pengarah-pengarah Defendan untuk menandatangani segala dokumen bagi membolehkan pindah milik Hartanah 1448 tersebut dilaksanakan dengan sempurnanya kepada atas nama *Pembeli*. (Emphasis added.)

[78] As defined in paragraph 5 of the statement of claim, the word "*Pembeli*" referred to in inter alia prayers 31.1(e) and 31.2(e) refer to all purchasers (i.e., STL, LSK plus the three plaintiffs).

[79] Thus, the plaintiffs' case for specific performance and all other relief is clearly unsustainable. This court thus decided that the claims of the plaintiffs be struck out with costs of RM15,000-00 with allocatur fees of RM600-00.