

**Perbadanan Pengurusan Palm Spring @ Damansara  
(suatu badan yang ditubuhkan di bawah Akta  
Hakmilik Strata 1985 (Akta 318))**

**v**

**Muafakat Kekal Sdn Bhd & 2 Ors**

**High Court, Kuala Lumpur – Suit No. 22NCvC-567-10/2013**  
Hue Siew Kheng J

August 1, 2017

*Land law – Vacant possession – Claim for – Application under "liberty to apply" to compel second defendant ("D2") to give vacant possession of a property pursuant to court order ruling that said property is common property belonging to plaintiff – Whether since D2 is no longer rightful owner of said property, responsibility/obligation of evicting D2's tenant now rest with plaintiff – Whether delivery of possession can be effected by D2 merely via letter*

This court, and as affirmed by the Court of Appeal, had found that the plaintiff is entitled to vacant possession of Block J of a condominium as it is common property belonging to the plaintiff. The plaintiff had filed the instant application under "liberty to apply" to compel D2 to evict all occupiers of Block J and deliver vacant possession to the plaintiff ("encl 156"). The plaintiff contended that the second defendant ("D2") is obliged to remove/evict one Butai Education Sdn Bhd ("Butai") who is a tenant brought in by D2. D2 however contended that vacant possession of Block J was handed over to the plaintiff via a letter; that consequently D2 has no legal capacity to evict Butai from Block J; and that it is incumbent on the plaintiff to now evict Butai.

**Issue**

Whether D2 is obliged to deliver up physical possession of Block J in a vacant condition and capable of immediate occupation.

**Held, allowing encl 156 with costs**

1. Delivery of possession cannot be effected by D2 via a letter merely notifying the plaintiff of the purported "Handover possession of Block J" and unilaterally declaring that the plaintiff is deemed, by the said letter, to have taken possession of the property. [see p 515 para 11 - p 516 para 11]
2. It is the duty of D2 to deliver up to the plaintiff a property that is in a vacant condition and empty of people and thus capable of occupation wherein the plaintiff must be able to assume and enjoy immediate and exclusive

possession, occupation and control of it. The fact that Butai is still occupying Block J is clear and cogent evidence of D2's failure to deliver vacant possession. [see p 516 para 12] 1

3. D2's conduct is not bona fide. Despite this court's judgment that D2 had no title or right to Block J, D2 continued to allow Butai to be in possession of Block J and had in fact enjoyed rental from Butai for 1 ½ years. [see p 516 para 13] 5

4. It militates against public interest and tantamount to a travesty of justice to allow D2 to accede to its stand that since it is no longer the rightful owner of Block J, the responsibility/obligation of evicting Butai now rest with the plaintiff. D2 was never the rightful owner of Block J to begin with as Block J was and is common property. [see p 516 para 14] 10 15

#### Cases referred to by the court

*Boo Kok Ngeak & Anor v Lim Kian Hoe & Anor* [1998] AMEJ 0036; [1998] 6 MLJ 727, HC (ref) 20

*Cubic Electronic Sdn Bhd v MKC Corporate & Business Advisory Sdn Bhd (and Another Appeal)* [2016] AMEJ 0741; [2016] 3 MLJ 797, CA (ref)

*NYK Logistics (UK) Ltd v Ibrend Estates BV* [2011] EWCA Civ 683, CA (ref) 25

CY Leong (Justin Voon Chooi & Wing) for plaintiff

Ting Lee Ping (Ringo Low & Associates) second defendant

*Judgment received: November 13, 2017* 30

#### Hue Siew Kheng J

**Enclosure 156** 35

[1] Enclosure 156 is the plaintiff's application for the second defendant ("D2") to evict all occupiers of Block J of the condominium and deliver vacant possession to the plaintiff. 40

[2] It is not disputed that the plaintiff is entitled to vacant possession of Block J as it is common property as found by this court and affirmed by the Court of Appeal.

[3] D2 however contends that vacant possession of Block J and the 44 accessory car parks together with a copy of the tenancy agreement dated September 30, 2015 between D2 and Butai Education Sdn Bhd were handed over to the plaintiff via its letter dated April 20, 2016.

[4] It is D2's stand that upon exhausting all avenues of appeal, it had acted speedily and cooperated with the plaintiff by handing over possession of Block J

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1 to the plaintiff and that it had ceased collecting rental from Butai upon handing over in April 2016.

5 [5] Consequently, as D2's rights and interest in Block J had been extinguished by the judgment of this court and possession of Block J having been handed over, D2 now has no legal capacity to evict Butai from Block J: it is incumbent on the plaintiff to now evict Butai.

**Plaintiff's submission**

10 [6] The plaintiff's application is made pursuant to paragraph (g) of the judgment of this case under the "liberty to apply" clause to give effect to the judgment which had ruled that Block J is common property and ought to be handed over to the MC of the condo.

20 [7] The plaintiff contends that it is D2 who is obliged to give vacant possession of Block J to the plaintiff and to remove/evict Butai since it was a tenant brought in by D2. The plaintiff disputes that D2 had handed over possession by its letter of April 20, 2016.

**Findings**

25 [8] It is trite law that handing over vacant possession means actual physical handing over of the premises empty and unoccupied: see *Cubic Electronic Sdn Bhd v MKC Corporate & Business Advisory Sdn Bhd (and Another Appeal)* [2016] AMEJ 0741; [2016] 3 MLJ 797.

30 [9] In *Cubic Electronic* (supra) the Court of Appeal endorsed with approval the view of Rimer CJ in *NYK Logistics (UK) Ltd v Ibrend Estates BV* [2011] EWCA Civ 683 that (at p 809):

35 ... "vacant possession" means that, at the moment that "vacant possession" is to be given, the property is empty of people and that the purchaser is able to assume and enjoy immediate and exclusive possession, occupation and control of it. It must be also be empty of chattels, although the obligation in this regard is likely only to be breached if any chattels left on the property substantially prevent or interfere with the enjoyment of the right to possession of a substantial part of the property.

[10] Similarly, in *Boo Kok Ngeak & Anor v Lim Kian Hoe & Anor* [1998] AMEJ 0036; [1998] 6 MLJ 727 the court held (at p 18 (AMEJ)); p 738 (MLJ)):

... the term "vacant possession" connotes the handing over of lawful and complete possession of a said property to another in a vacant condition and thus capable of occupation and free from any claim of right of possession either by the vendor or any other party.

[11] In light of these various pronouncements of the law in respect of vacant possession, delivery of possession cannot possibly be effected by D2 via a letter

merely notifying the plaintiff of the purported "Handover possession of Block J" and unilaterally declaring that the plaintiff is deemed, by the said letter, to have taken possession of the property. 1

[12] As such I find that D2 has not delivered vacant possession of Block J to the plaintiff as it is the duty of D2 to deliver up to the plaintiff a property that is in a vacant condition and empty of people and thus capable of occupation wherein the plaintiff must be able to assume and enjoy immediate and exclusive possession, occupation and control of it. The fact that Butai is still occupying Block J is clear and cogent evidence of D2's failure to deliver vacant possession. 5 10

[13] Furthermore, I agree with the plaintiff that D2's conduct is not bona fide. Despite this court's judgment in November 2014 that D2 had no title or right to Block J, D2 continued to allow Butai to be in possession of Block J and had in fact collected rental till April/May 2016, thus enjoying rental from Butai for 1½ years! 15

[14] It militates against public interest and tantamounts to a travesty of justice to allow D2 now to wash its hands off the matter and thumb its nose at the court and the plaintiff by acceding to its stand that since it is no longer the rightful owner of Block J, the responsibility/obligation of evicting Butai now rests with the plaintiff: D2 was never the rightful owner of Block J to begin with as Block J was, and is, common property. 20 25

[15] As stated earlier, despite the judgment of this court delivered in November 2014, D2 continued to enjoy rental from Butai for a further 1½ years. D2 cannot and should not be allowed to take advantage of its own wrong. 30

[16] Accordingly, encl 156 is allowed with costs. D2 is hereby ordered to deliver up physical possession of Block J in a vacant condition and capable of immediate occupation within 30 days from today. Failure to comply will cause D2 to run the risk of being held in contempt, with all the attendant consequences as provided for under the law. 35 40