

CONTRACT

Contract – Agreement to procure government contract on influence peddling – Whether contract void – Whether contrary to public policy – Contracts Act 1950, section 24

Merong Mahawangsa Sdn Bhd & Anor v Dato' Shazryl Eskay bin Abdullah

[2015] 5 MLJ 619, Federal Court

Facts The first appellant was a company who had equity participation in a Consortium (“the Consortium”) while the second appellant was its executive director. The respondent was an individual engaged by first appellant to render his services to procure and secure the award of a project (“the project”) by the Malaysian Government to the Consortium. A letter of undertaking containing such terms was executed by the appellants to the respondent and a sum of MYR20 million was agreed as a consideration for the respondent’s services. The dispute arose when the appellants failed to honour their undertaking and the respondent sued for the sum of money in consideration of his services. However, it was argued that the procurement on account of the respondent’s close relationship with the Government of Malaysia was against public policy, thus rendering the letter of undertaking illegal and void. It was further argued that the respondent had not secured any project from the Malaysian Government since the project was cancelled subsequently. The High Court held that the respondent’s services were not against public policy but he was not entitled to payment as the project was withdrawn later. Upon appeal, the Court of Appeal ordered the appellants to pay the respondent. The appellants appealed.

Issue The issue was whether an agreement to provide services to influence decision of a public decision maker to award a contract was contrary to public policy and therefore void under section 24(e) of the Contracts Act 1950.

Held In allowing the appeal, the court held that it was contrary to public policy to hire a person for money or valuable consideration, to use his position and interests to procure a benefit from the government. This was because the sale of influence led to corruption and undermined public confidence in the government which was detrimental to public interest. Since the sum of MYR20 million was a payment for the respondent’s service in using his influence and good relationship with the Government of Malaysia to procure the project for the Consortium, for the first appellant’s benefits, such consideration was deemed unlawful and therefore rendered the letter of undertaking void.