

## CONTRACT

### Construction of contract – Delivery of vacant possession – Deeming provision in agreement – Whether vacant possession delivered – Whether deeming provision rebutted

*Lucy Wong Nyuk King & Anor v Hwang Mee Hiong*

[2016] 4 CLJ 813, Federal Court

**Facts** A Sale and Purchase Agreement (SPA) was signed by the defendants (appellants), the proprietors of a property (“the Property”) and the plaintiff (respondent), the purchaser. The SPA contained a deeming provision (“the Provision”) stating that vacant possession of the Property shall be deemed to be delivered upon signing of SPA. It was also agreed that the SPA may be rescinded if the Property was damaged by fire before the delivery of vacant possession and that the risk and benefit insured for the Property remains with the defendants until then. The Property was in fact damaged by fire after signing the SPA and the defendants were compensated. The plaintiff subsequently rescinded the SPA and the defendants demanded for the balance purchase price. The plaintiff sued the defendants at the High Court for breach of contract, who then counter-claimed on the same. The defendants, relying on the Provision, contended that vacant possession had been delivered on the date of signing of SPA, before the fire incident. The High Court held that vacant possession had not been delivered prior to the fire incident despite the Provision, hence the plaintiff’s rescission was lawful. The Court of Appeal dismissed the appeal. The defendants appealed to the Federal Court.

**Issue** The main issue was whether vacant possession had been delivered prior to the fire, considering the Provision.

**Held** In dismissing the appeal, the court held that the defendants had not delivered vacant possession to the plaintiff before the occurrence of fire and that the rescission of the SPA is justified. The court also ruled that the fact that the insured risk and benefits, namely the compensation remained with the defendants until the delivery of the vacant possession rendered the expression “shall be deemed” of the Provision to be rebuttable, and that the acts of defendants in retaining the benefits of the insurance had rebutted the presumption in the Provision.