

CONTRACT

Contract – Joint venture agreement – Non-delivery of vacant possession – Non-performance of contractual obligations – Claim which causes taxpayers to be short-changed – Whether liability established

Setiausaha Kerajaan Negeri Selangor (Perbadanan) v Perbadanan Riadah Sdn Bhd and another appeal

[2016] 4 MLJ 723, Court of Appeal

Facts The appellant/plaintiff, a developer, entered into a joint venture agreement (“the Agreement”) with the state’s agency, namely the first and second defendants/respondents to develop the property for a housing and industrial project on a land (“the Land”). The first defendant, who was to give vacant possession within six months, did not do so, but neither did the plaintiff demand vacant possession. It was also within the knowledge of the plaintiff that the said land was leased by the state and its agencies for the purpose of sand dredging activities by third parties. The plaintiff wrote to the defendants on numerous occasions to complain of the sand mining activities and the delivery of vacant possession of the Land. The plaintiff also informed the defendants about its intention to change the nature of the development project due to the non-profitability of the initial project. However, the defendants did not respond. The defendants then sued the plaintiff for the failure to perform the development project after the Agreement expired. The plaintiff, on the other hand, claimed against the defendants for compensation as the latter had failed to deliver the vacant possession of the Land. The High Court decided that the first defendant was liable to the plaintiff but dismissed the plaintiff’s claim against the second defendant. Aggrieved, the first defendant and the plaintiff appealed.

Issue The issue was whether the first defendant was liable.

Held In allowing the first defendant’s appeal and dismissing the plaintiff’s appeal, the court held that when the state’s funds are bound to be short-changed by the plaintiff’s claim based purely on a technical default, the court, in arriving at its decision, ought to balance the contractual rights of the parties. In the present case, the court ruled that the non-delivery of vacant possession was a technical default that could not constitute a cause of action to seek damages, especially when there was clear evidence by the plaintiff to suggest that they could not have proceeded with the Agreement profitably.