

CONTRACT

Joint Venture Agreement (JVA) – Land owners entered into JVA with developer to develop land into housing development – Number of houses entitled by the land owners agreed – Part of land was acquired – Whether land owners' entitlement has to be reduced

Summer Harvest Sdn Bhd v Michael Chang Tze Chon (suing as executor for the estate of Chan Chow Kong @ Chan Chau Ko, deceased) & Ors

[2017] 5 MLJ 77, Court of Appeal

Facts The appellant, a developer, entered into a joint venture agreement (JVA) with the respondents, the land owners to develop a land into a housing development. The JVA provided that the respondents will be entitled to an agreed number of houses upon completion of the housing development. The JVA also anticipated the possibility of land acquisition and contemplated a proportionate reduction of the respondents' entitlement. Later, the appellant was informed that part of the land was acquired by the government for highway construction. Subsequently, the respondents' entitlement was varied several times. A dispute arose when the respondents sued the appellant in the High Court, alleging that they suffered loss as a result of the breach of obligations in the JVA by the appellant, which include failure to give titles and vacant possession of some units as well as varying the number and types of houses built that had unjustly enriched the appellant. On the other hand, the appellant argued that the respondents' entitlement ought to be reduced proportionately and pleaded a set off sum for the units that were over-delivered to the respondents following the land acquisition. The High Court decided in the respondents' favour, hence the present appeal.

Issue The main issue was whether the respondents' entitlement ought to be reduced proportionately in light of the land acquisition in accordance with the JVA.

Held In allowing the appellant's set off and dismissing the appeal, the Court of Appeal held that the respondents' entitlement under the JVA should be reduced proportionately following the land acquisition. It was further ruled that there is no evidence showing that the respondents' entitlement had been reduced proportionately, even though the subsequent layout plans of the development has excluded the acquired land from the development.

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