

LAND LAW

Land – Sale and Purchase Agreement – Loan agreement cum assignment – Subsequent transfer registered – Whether the title of a bona fide registered owner without notice may be defeated by a non-registered equitable interest of an assignee or lender – National Land Code, section 340

Samuel Naik Siang Ting v Public Bank Bhd

[2015] 6 MLJ 10, Federal Court

Facts Sometime in 2002, the proprietor of the land and the developer executed a sale and purchase agreement in favour of a purchaser (“the earlier purchaser”), who had borrowed a loan from the respondent to finance the purchase, through a loan agreement cum assignment. Although the title to that land was issued in 2003, it was not delivered to the respondent. Instead, sometime between March 2004 and January 2005, the proprietor of the land executed a Sale and Purchase Agreement with the appellant regarding the same piece of land. The dispute began when the respondent discovered that the lot was sold and the title was registered in the appellant’s name. Meanwhile, the respondent obtained a judgment against the earlier purchaser upon default in repayment. At the High Court, the following declarations relating to the lot were made in the respondent’s favour: (i) that the earlier purchaser was the rightful owner, (ii) that the respondent was the legal assignee of the title and interest by virtue of the deed of assignment, and (iii) that the transfer of the lot to the appellant was void. The appellant’s appeal to the Court of Appeal was dismissed, hence, the current appeal.

Issue The issue was whether the title of a bona fide registered owner without notice under the National Land Code (NLC) could be defeated by a non-registered equitable interest of an assignee or lender under an earlier sale and purchase agreement and deed of assignment in respect of the same piece of land.

Held In dismissing the appeal, the court held that a valid equitable interest of an assignee over the land which was not registered, under a prior sale and purchase agreement in respect of the same piece of land with another purchaser, takes precedence over the subsequent registered title of a purchaser, although he was a bona fide immediate purchaser without notice. The respondent was entitled to deal with the lot beneficially and absolutely by virtue of the deed of assignment. The subsequent transfer to the appellant was void, as the land proprietor became a bare trustee when the sale and purchase agreement was signed and full purchase price was paid.