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The firm was established with two (2) main objectives; namely to enable the partners to have control over their professional career and to provide the best possible solution to our clients' legal requirements taking into account not only the law but also the commercial aspects of our clients' circumstances.

It is the firm's strong believe that lawyers, though professionals, are essentially service providers. Accordingly, we strive to provide our clients' with the best possible solution in the shortest time possible.

AREAS OF PRACTICE

Articles

Arbitration & Alternative Dispute Resolution	-	Stamping of documents, penalty and admission of document as evidence
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BRIEFLY

With the world cup drawing to a close, employers can rest assured that their employee's sleep will be back to normal soon. The first half of the year has indeed been fast and furious, with the frantic sell-off in the regional stock markets, the no so subtle fight between the previous and current Prime Minister and the natural earth quake in Indonesia and yet again the non-natural landslide in Ampang.

Stamp Duty

"Stamping of documents, Penalty and Admission of document as evidence" by Gan Wee Howe

As a general rule, a document executed within Malaysia is to be stamped within 30 days from the date of the document.

If the document is not stamped within the said period of 30 days, then in addition to the unpaid duty, a penalty will be payable. The penalty is equivalent to:

- i. RM25.00 or 50% of the unpaid duty, whichever is the greater, if the document is stamped within 3 months after time for stamping;
- ii. RM50.00 or 100% of the unpaid duty, whichever is the greater, if the document is stamped later than 3 months but not later than 6 months after time for stamping;
- iii. RM100.00 or 200% of the unpaid duty, whichever is the greater, in any other case.

In order for a document to be admitted as evidence in a court proceeding, the document must be stamped or stamped with the correct duty. If otherwise, the document in question may only be admitted as evidence upon payment of the correct duty and penalty.

However, the contractual terms of an unstamped, or "under-stamped", (but executed) document remains valid and is not void.

Company

"Protection for the Minority Shareholder" by Dion Kor Shiang Hua

An individual shareholder or the minority shareholder cannot take any action to enforce the company's rights since these shareholders do not have *locus standi* to do so. In cases where a harm is done to the company, the decision whether or not to enforce the right of the company is normally a matter which is within the board of director's authority. This is because Article 73 of Table A specifies that the business of the company shall be managed by the directors. If the directors refuse to take action against the person who has done a wrong against the company, no individual shareholders can proceed on behalf of the company.

Where the directors are also the company's majority shareholders, they are able to control the company by virtue of majority shareholding and the power they have as directors. There is nothing basically wrong with this concept because it prevents multiplicity of action and is

related to the concept that “majority will” prevails in company law.

There are however exceptions to the above rule, which are (a) ultra vires acts (i.e. where transactions entered into by the company which contravenes the objects clause in its memorandum of articles), (b) fraud on the minority, (c) special majorities (i.e. where resolutions that requires special majority but passes by simple majority), (d) personal rights (i.e. where personal rights of members have to be observed by the company and by the members amongst themselves) and (e) when the justice of the case requires.

In the above exception, the court may allow the minority shareholders to bring court proceedings on behalf of the company.

The protection of shareholder's interest has also been legislated under Section 181 of the Companies Act 1965 (“Act”). The gist of Section 181 of the Act is that there must be oppression, disregard of a member's interest, unfairly prejudicial conduct or unfairly discriminatory conduct.

Under Section 181 of the Act, the Court order under this section may:-

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the company in future;
- (c) provide for the purchase of the shares of the company by other members of the company or by the company itself;
- (d) in the case of a purchase of shares by the company provide for a reduction of the company capital; or
- (e) provide that the company be wound up.

The purpose of the above law is based on the premise that notwithstanding that “majority will” prevails in company law, the majority shareholders or directors should not disregard a member's interest in conducting the affairs of the company.

CONSUMER

“The Consumer Tribunal (“Tribunal”)” by Gan Wee Howe

The Tribunal was established under the Consumer Protection Act, 1999 to hear claims concerning defective goods and services.

Its jurisdiction is limited to hearing claims not exceeding RM25,000.00 (which is also the limit of the Magistrates' Court).

To commence a claim in the Tribunal, all one has to do is complete a pre-printed form (which is available from the Tribunal offices found in each state capital) and file the same with the Tribunal together with a nominal fee of RM5.00.

The claim must be brought within 3 years of the claim accruing. Both claimant and respondent are allowed to attend and be heard. No legal representation is allowed (i.e. lawyers are not permitted). The hearing is open to public

An award will be handed down even if the respondent fails to attend.

Conveyancing

“Strata Titles and Management Corporation” by Gan Wee Howe

Can a management corporation (“MC”) prevent a registered owner and resident of a condominium from entering the condominium compound in his car thus preventing him from parking in his allocated car park bay within the compound of the condominium?

Further, can the MC disconnect or disrupt the water supply to the owner’s on the grounds that owner failed to pay maintenance charges although no arrears in water bill?

The High Court held that:

1. the Strata Titles Act, 1985 clearly envisaged that the recovery of any sum whatsoever due to the management corporation is to be by way of an action for debt in the courts and not by clamping water meter or prevent entry of the owner’s car into the condominium compound;
2. the action of the MC in preventing the owner from entering the condominium compound in his car park for purportedly failing to pay maintenance charges was beyond its power; and
3. any house rules governing use of the condominium must be adopted as by-laws pursuant to Clause 44 of the Strata Titles Act, 1985 before they are enforceable.

The above case was a High Court decision in *John Denis De Silva v. Crescent Court Management Corporation* [2006] 2 CLJ 605.

The above case dealt with a situation where the management corporation has been established i.e. the strata titles have been issued.

Would the outcome be any different if the MC is not established yet but instead an owner is dealing with the vendor or the vendor’s agent who is maintaining the common property pending issuance of strata title? And what if there was a deed of mutual covenant (“DMC”) governing the rights and obligations of the owner?

Upon the opening of the strata register (i.e. issuance of strata titles), a MC consisting of all parcel proprietors will come into existence. The MC is an entity and may sue and be sued. These are provided by Section 39 of the Strata Titles Act, 1985 (“Act”).

Accordingly, once the MC comes into existence it will take over the maintenance of the condominium from the vendor or vendor’s agent.

Clause 44(1) of the Act provides that the statutory by-laws in the Third Schedule of the Act shall come into force from the opening of the book of strata register and that the by-laws shall not be amended by the management corporation.

As such the DMC will be enforceable by the vendor or its agents against the parcel proprietors during the period before the opening of the book of strata register (i.e. issuance of the strata titles).

Upon opening of the strata register, the DMC may be enforced by the MC against the parcel proprietors provided that the provisions therein are not inconsistent with the statutory by-laws set out in the Third Schedule of the Act AND such provisions are adopted as by-laws of the condominium.

Until then, the MC cannot enforce the provisions in the DMC as there is no contractual relationship between the parcel proprietors and the MC as the DMC is an agreement executed between the vendor and the parcel proprietors.

Persons bound by the statutory by-laws in the Third Schedule of the Act are the MC, proprietor of a parcel and occupier of the parcel (which would include a tenant, licensee or a mortgagee/chargee in possession).

However, depending on the manner the DMC is drafted, it may be possible for a parcel proprietor to enforce the DMC against another parcel proprietor even when a management corporation has come into existence.

The above view is supported by "Strata Title in Singapore and Malaysia" by Teo Keang Soo and also the High Court case of *Premier Model (M) Sdn. Bhd. v. Phileo Promenade Sdn. Bhd.* [2001] 1 LNS 173.

In the *Phileo* case, it was held that as the Act does not apply as the strata title has yet to be issued and in such a case, the relationship between the vendor (or its agent providing the maintenance service) is governed solely by the terms of the sale and purchase agreement (or if applicable the DMC).

The facts of the *Phileo* case revealed that:

1. the sale and purchase agreement provides that failure to pay service charges will entitle the vendor to turn off the water supply to the individual unit;
2. service charges included cost of water supply; and
3. the water supply to the individual unit did not come direct from Jabatan Bekalan Air Selangor ("JBAS"). Instead JBAS supplied water to bulk meters and the vendor in turn was responsible for the supply from the bulk meters to the individual units.

Based on the above facts, the High Court held that the vendor was within its rights to cut water supply for failure to pay service charges.

Take note that if JBAS had supplied water directly to the individual unit then there is no doubt that the vendor's act of cutting off water supply would be illegal as only JBAS would under those circumstances have the right to do so.

Further, had service charges not included cost of water supply but instead is billed separately by the vendor and there are no arrears with respect to the same, the vendor will not be entitled to cut off water supply.

There is an interesting High Court case where an issue for determination was whether the act of disconnecting the water supply to an apartment in a resort for failure to pay service charges constituted a nuisance – *Ho Siew Choong v. On-Kward Realty Sdn. Bhd. & Anor.* [2000] 8 CLJ 175.

It is not clear from the facts of the case whether the service charges included water charges and if separate, whether the water charges were paid up-to-date. However, it was clear that water to the resort was supplied by the relevant authority to bulk meters.

The Court held that the said act of disconnecting the water supply was an act of nuisance and awarded damages to the plaintiff. The judge said that his decision was based on the reasoning in the textbook "Unlawful Interference with Land". The judge merely recited a short passage from the textbook without elaborating any further. No injunction was given as the defendant has re-connected water supply.

Accordingly, it would seem from *Ho's* case (supra) that the MC or company appointed by the vendor to provide management services for a condominium complex (as the case may be) may NOT, based on the tort of nuisance, disconnect water supply to an individual unit of condominium for failure to pay service charges even if the adopted by-laws (in the case where strata title has been issued) or the provisions of the sale and purchase agreement or deed of covenant entitles (in the case where the strata title has yet to be issued) entitles the MC or the vendor/its agent to do so.

[Note: The Strata Titles Act, 1985 is applicable to the states of Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and Federal Territory of Kuala Lumpur only.]

Miscellaneous Matters

“Prohibition on exclusion of liability” by Dion Kor Shiang Hua

Any purchase of goods which you have made as a consumer (being for personal use or consumption) will be governed by the Consumer Protection Act 1999 (“Act”).

Under Section 71 of the Act it is stated that the liability of the manufacturer or importer of a product to the consumer where such consumer has suffered damage caused wholly or partly by a defect in that product cannot be limited or excluded by any contract term, notice or other provision.

What this means is that suppose you have bought a refrigerator which was manufacturer by ABC Sdn Bhd, under Section 71 of the Act, ABC Sdn Bhd cannot in its manufacturer’s warranty or any other contract exclude liability against any damage suffered by you as a result of that refrigerator being defective or faulty.

Seriously Speaking

Marriage After 25 years

Married 25 years, I took a look at my wife on day and said “Honey, 25 years ago we had a cheap apartment, a cheap car, slept on a sofa bed, and watched a 10-inch black and white TV, but I got to sleep every night with a hot 25-year old blonde.”

“Now, we have a nice house, nice car, big bed, and plasma screen TV, but I’m sleeping with a 50-year old woman. It seems to me that you are not holding up your side of things.”

My wife is a very reasonable woman. She told me to go out and find a hot 25-year old blonde, and she will make sure that I would once again be living in a cheap apartment, driving a cheap car, and sleeping on a sofa bed.

Disclaimer

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