
MURAD & FOO v. PERBADANAN PEMBANGUNAN PULAU PINANG; ONG CHIN
LEE (THIRD PARTY)
HIGH COURT MALAYA, PENANG
ABDUL HAMID MOHAMAD J
ORIGINATING SUMMONS NO: 24-250-96
17 OCTOBER 1997
[1997] 4 CLJ SUPP 430; [1997] 4 BLJ 430

LEGAL PROFESSION: Solicitors' remuneration - Preparation of Tenancy Agreement - Applicable scale - Whether that of the Solicitors' Remuneration Order 1991 - Whether the Solicitors' Remuneration (Amendment) Order 1994 - Proper calculation of fee

The plaintiff acted as solicitors for the landlord defendant in a tenancy transaction, and in consequence prepared a tenancy agreement ('the agreement') for the defendant which they completed on 23 February 1993. *Inter alia* the agreement stipulated that solicitors' costs in respect thereof would be paid by the tenant ('the third party'), and further that, one month's rental for the premises was at RM398,406.

It was not in dispute that as of 23 February 1993, the Solicitors' Remuneration Order 1991 ('the 1991 Scale') was in force.

The facts showed, however, that the agreement was only executed on 14 April 1995 and by that time the Solicitors' Remuneration (Amendment) Order 1994 ('the 1994 Scale') had come into force.

The plaintiff intended to use the lower scale for their fees, and in the circumstances issued a bill under the 1994 Scale on 29 June 1995.

Later on, however, the plaintiff had a change of mind and sought to deliver a bill under the higher 1991 Scale.

They therefore filed the present originating summons wherefore they applied for the court's a ruling on (i) the applicability or nonapplicability of the 1991 Scale (ii) the proper calculation of their fee.

Held:

[1] The keywords in para (b) of r. 3 of the 1991 Order are 'for completing any transaction'. The word 'transaction' in the para. is used to refer to the various types of 'business' mentioned in the rule, and does not mean the nature of the work done by the solicitor such as preparing a sale and purchase agreement.

The 'transaction' is the sale and purchase, and not the preparation of the agreement1 OF 5.

[2] As to the question of when a transaction is completed, in respect of tenancies, para. (b)

provides two situations, namely 'tenancies' and 'agreements for tenancies'. The more relevant provision, however, is 'agreements for tenancies' for which the transaction is completed when the tenancy is executed.

[3] The tenancy agreement herein was executed on 14 April 1995.

It was thus executed at a time after the 1994 Scale has come into force.

The applicable Scale, in the circumstances, is the 1994 Scale.

The fact that the effective date of the tenancy or that possession was taken at an earlier date is not material.

[4] The words 'month's rent' in the 1994 Order can only mean what they say.

They are too clear to mean anything else.

That being so, the proper interpretation of the 1994 Scale in so far as it is relevant to this case is that:
 (a) for the first RM10,000 of the monthly rent, the fee is 1/4 of the month's rent (RM398,406) and not 1/4 of RM 10,000.
 (b) thereafter, i.e. for the monthly rent in excess of RM10,000 (RM398,406 - RM10,000 = RM388,406) the fee is 1/10 of the month's rent (RM398,406). [*Order accordingly.*]

Case(s) referred to:

Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. [1920] 28 CLR 129 (*refd*)

[*Lembaga Amanah Sekolah Semangat Malaysia v. Collector of Land Revenue* \[1976\] 1 LNS 58 \(*refd*\)](#)

Tan Kim Chuan v. Chandu Nair [1991] 1 CLJ 682 (*refd*)

Kumpulan Kamuning v. Rajoo [1983] 2 MLJ 400 (*refd*)

Legislation referred to:

Solicitors' Remuneration (Amendment) Order 1994

Solicitors' Remuneration Order 1991, O. 3

Counsel:

For the plaintiff - Foo Say Keow; M/s Murad & Foo

For the defendant - Lourdunathan Andrew; M/s Andrew & Co

JUDGEMENT

Abdul Hamid Mohamad J:

The plaintiff is a firm of advocates and solicitors.

The defendant as landlord entered into a tenancy agreement of 2277 hectares of oil palm estate.

The plaintiff acted as solicitors for the defendant in the transaction.2 OF 5

On 23 November 1992 the defendant instructed the plaintiff to prepare a tenancy agreement.

The plaintiff completed the preparation of the agreement on or before 23 February 1993. (At this point of time the Solicitors' Remuneration Order 1991 (1991 scale) was in force.) The tenancy agreement was executed by the defendant (as landlord) and the third party (as tenant) on 14 April 1995.

The plaintiff was not involved in the execution. (As at that date the Solicitors' Remuneration (Amendment) Order 1994 (1994 Scale) had come into force.

However, it should be noted that the three year term of the tenancy commenced on 1 December 1992 and the third party had already entered into possession of the land on such date upon the same terms and conditions contained in the tenancy agreement.

Under s. 10.12 of the tenancy agreement, all solicitors' costs and expenses (including the landlord's) in respect of the tenancy agreement should be borne and paid solely by the tenant (third party). It is also agreed that for the purpose of these proceedings one month's rent is RM398,406.

On 29 June 1995 the plaintiff issued their Bill No. 3494 under the 1994 scale which scale is lower than the 1991 scale.

This was done to avoid any allegation of overcharging.

However, as the bill remains unpaid the plaintiff contend that they are at liberty to withdraw the bill and to deliver a bill under the 1991 scale, if it is held to be the correct scale to be applied.

It should be pointed out that the plaintiff instituted this proceeding in order to get a ruling by the court and also to give the third party an opportunity to dispute the amount of the fee payable.

The defendant and the third party filed their affidavit and were represented by counsel on the day this application was heard.

There are two issues here:
 (1) whether the 1991 scale or the 1994 scale is applicable;
 (2) if the 1994 scale is applicable how is the fee to be calculated?

Rule 3 of the 1991 order reads:

3. The remuneration of a solicitor in respect of business other than contentious business shall be -
 (a)... (omit)
 (b) in respect of tenancies/leases and agreements for tenancies/leases in the Second Schedule, or agreements reserving rent, for completing any transaction, the remuneration of the solicitor having the conduct of the business shall be in accordance with the Second Schedule;3 OF 5

The Second Schedule provides:

Second Schedule Tenancy/lease.

Tenancies/Leases or agreements for tenancies/leases of immovable properties (other than a mining lease, or a lease for building purposes or agreement for the same where the Sixth Schedule applies).

The fee shall be equivalent to half month's rental subject to a minimum fee of \$200 for each transaction.

The relevant scale as provided by the 1994 Order is as follows:

| | | | | | |
|----------------------|------------|------------------------|------------------|------------|-------------------|
| Tenancy Monthly rent | Scale Fees | For the first RM10,000 | 1/4 month's rent | Thereafter | 1/10 month's rent |
|----------------------|------------|------------------------|------------------|------------|-------------------|

There shall be a minimum scale charge of RM200.

Which Scale is applicable in this case? 1991 Scale or 1994 Scale?

The key words in para. (b) are "for completing any transaction". So what is a "transaction" and when is a "transaction" completed?

I think the best way to find out the meaning of the word "transaction" in the order is to look at order itself, how that word is used.

I find that the word transaction is used a number of times in the order.

Rule 3 first talks generally about "remuneration of a solicitor in respect of business...". In the paragraphs that follow "business" is divided into sales, purchases or other forms of conveyances, [para (a)], tenancies/leases and agreements for tenancies/leases in the second schedule or agreements reserving rent [para (b)] and so on as in paragraphs (c), (d) and (e). Then para. (f), *inter alia*, talks about "aborted transactions".

It is clear to me that the word "transaction" is used to refer to the various types of "business" mentioned in the rule e.g. sale, purchase, tenancy, charge etc.

It does not mean the nature of the work done by the solicitor eg. preparing a sale and purchase agreement.

It would also be ridiculous to talk about an aborted preparation of sale and purchase agreement.

In such a case, it is not the preparation of sale and purchase agreement which is aborted.

It is the sale and purchase which is aborted.

So, the "transaction" is the sale and purchase, not the preparation of the agreement.4 OF 5

The next question is when is the transaction completed? Again, it must refer to the "transaction", i.e. sale, purchase etc.

However, we are concerned with para. (b) in particular "tenancies". In respect of tenancies, the paragraph provides two situations.

First, tenancies.

Secondly, agreements for tenancies.

The more relevant provision is "agreements for tenancies". In my judgment, in the case of "agreements for tenancies", the transaction is completed when the tenancy agreement is executed.

When was the tenancy agreement executed? It is not disputed that it was executed on 14 April 1995, after the 1994 scale has come into force.

It does not matter that the effective date of the tenancy or that possession was taken at an earlier date.

So, in the circumstances, the applicable scale in this case is the 1994 scale.

We now come to the second question: how is the 1994 scale to be interpreted? I have reproduced the provision earlier.

The words "month's rent" can only mean what they say.

They are too clear to mean anything else.

In *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd.* (High Court of Australia) [1920] 28 CLR 129, Hygins J said:

The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole.

The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the

result to be inconvenient or impolitic or improbable.

See also [*Lembaga Amanah Sekolah Semangat Malaysia v. Collector of Land Revenue \[1976\] 1 LNS 58 \(refd\)*](#). *Tan Kim Chuan v. Chandu Nair (SC)* [1991] 1 CLJ 682 and *Kumpulan Kamuning v. Rajoo (FC)* [1983] 2 MLJ 400.

That being the case in my judgment, the proper interpretation of the 1994 Scale as is relevant to this case is that:

(a) For the first RM10,000 of the monthly rent, the fee is 1/4 of the month's rent (RM398,406) not 1/4 of RM10,000.

(b) Thereafter, i.e. for the monthly rent in excess of RM10,000 (RM398,406) - RM10,000 = RM388,406 the fee is 1/10 the month's rent (RM398,406).

I order accordingly but I make no order as to costs.

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