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Effects of a Draft Agreement During Negotiations

Simplicity Network Sdn Bhd v Penang Port Sdn Bhd^[1]

The plaintiff was a tenant of a retail space at Swettenham Pier Cruise Terminal managed by Penang Port. When the plaintiff fell into arrears of rent, the parties negotiated on the terms regarding the proposed surrender of the retail space. In the course of negotiations, the plaintiff prepared a draft settlement agreement which they sent to Penang Port for their consideration. Penang Port decided not to proceed further with the negotiations and demanded vacant possession of the retail space.

The plaintiff then sought to enforce the terms of the draft settlement agreement by specific performance and asked for compensation for breach of contract. Penang Port counterclaimed for outstanding rent and vacant possession of the retail space.

After full trial, the High Court judge dismissed the plaintiff's claim and allowed Penang Port's counterclaim. In particular, the High Court judge found that the draft settlement agreement did not constitute a concluded contract for three reasons:

- (a) Penang Port had expressed disagreement on several terms in the draft settlement agreement;
- (b) The plaintiff themselves did not act in accordance with the terms of the draft settlement agreement; and
- (c) The parties had not signed the draft settlement agreement.

The plaintiff appealed. On 3 July 2019, the Court of Appeal affirmed the High Court decision.

Penang Port was represented by partner, SM Shanmugam, and associate, Hooi Chung Wai, of Lee Hishammuddin Allen & Gledhill.

The grounds of judgment of the High Court may be viewed here.

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[2018] 1 LNS 2145