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**'Moral Conduct' in Determining Conclusion of Contract?**

*Eng Song Aluminium Industries Sdn Bhd v Keat Siong Property Sdn Bhd*<sup>[1]</sup>

The notion of "moral conduct" was considered by the Court of Appeal in a case involving a seller abandoning the sale of a parcel of land.

Negotiations for the sale progressed for eight months. Correspondence exchanged between the parties used terms such as "subject to contract" and "there shall be no binding contract between the parties until formal agreements are executed", culminating in an email dated 11 May 2016 in which the seller, via its solicitors, stated:

"We have no further comments on the SPA and TA draft. Kindly proceed to engross of the same, for your clients' kind execution. Please let us have the SPA and TA duly executed by your client together with the balance deposit".

The buyer signed the draft sale and purchase agreement ("**SPA**") and forwarded it to the seller, together with payment of the balance deposit. However, the seller returned the draft SPA and payment to the buyer without giving any reasons. This prompted the buyer to initiate legal action for specific performance of the SPA.

The High Court allowed specific performance. On appeal, the Court of Appeal affirmed the decision of the High Court and held that a valid and enforceable contract had materialised between the parties for, among others, the following reasons:

- (a) The length of negotiations of eight months indicated an intention and seriousness of the parties to conclude the draft SPA.
- (b) The parties, property, price and terms were identified with certainty.

(c) The moral conduct of the seller was relevant in determining the issue at hand.

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