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Court of Appeal Clarifies Jurisdiction of Housing Tribunal And Limitation Period Under Section 16N(2) of the HDA

Lakefront Residence Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor (and 3 Other Appeals) [2023] MLJU 2352

The Tribunal for Homebuyers Claims, or more commonly known as the Housing Tribunal, was established under the Housing Development (Control & Licensing) Act 1966 (**HDA**) with the purpose of providing an affordable and expedient avenue for homebuyers to make claims not exceeding RM50,000.00¹. Section 16N(2) of the HDA provides the jurisdiction of the Housing Tribunal, which is limited to a claim brought by a homebuyer based on a cause of action arising from the statutory prescribed form of contract entered with the housing developer (**SPA**) not later than 12 months from:

¹ Section 16M, Housing Development (Control & Licensing) Act 1966

- a) the date of issuance of the certificate of completion and compliance (**CCC**) for the housing accommodation or the common facilities, whichever is later;
- b) the expiry date of the defects liability period as set out in the SPA; or
- c) the date of termination of the SPA by either party and such termination occurred before the date of issuance of the CCC or the common facilities, whichever is later.

In this recent decision, the Court of Appeal, among others, clarified the issues relating to the jurisdiction of the Housing Tribunal.

Brief Facts

In the four appeals, the purchasers filed their respective claims with the Housing Tribunal, alleging that Lakefront Residence Sdn Bhd, the housing developer (**Developer**), had wrongfully amended and deviated from the approved building plan of the stratified development without the prior consent of the purchasers (**Tribunal Claim**). The original design, vis-à-vis the approved building plan referred in the sale and purchase agreements (**SPAs**), included the installation of a centralised air conditioning system (**CACS**) without any outdoor compressors installed within the indoor build-up area of purchasers' parcels. The Developer unilaterally replaced the CACS with a split unit air conditioning system, which required the installation of outdoor compressors within the indoor build-up area demarcated as "Yard", which is also the kitchen area of the parcel (**Unilateral Deviation**). After receiving delivery of vacant possession of the parcels, the purchasers reported the Unilateral Deviation as a defect. Discussions subsequently took place between the Developer and the purchasers. The Developer admitted to the Unilateral Deviation and, by conduct, accepted the Unilateral Deviation as a

defect. As no solution was forthcoming from the Developer, the purchasers relocated the outdoor compressors at their own cost and expense (**Cost**) and thereafter pursued the Tribunal Claim to seek recovery of the Cost, which was allowed by the Housing Tribunal (**Tribunal Decision**). Dissatisfied with the Tribunal Decision, the Developer commenced judicial review proceedings at the High Court seeking to quash the Tribunal Decision (**JR Application**). The High Court upheld the Tribunal Decision and dismissed the JR Application. The Developer appealed to the Court of Appeal.

Court of Appeal

The Developer's appeal was premised on two grounds concerning Section 16N(2) of the HDA – (1) that the Housing Tribunal has exceeded its jurisdiction as the Unilateral Deviation was a matter outside of the SPAs; and (2) that the Tribunal Claim was time-barred.

The Developer contended that the Unilateral Deviation was not a defect within the ambit of the defects liability clause under clause 29(1) of the SPAs, but instead a matter under the deed of mutual covenants (**DMC**). The Housing Tribunal therefore did not have jurisdiction under Section 16N(2) of the HDA to hear the Tribunal Claim. The Developer also contended that the Tribunal Claim was time-barred as it was filed beyond the 12-month limitation period under Section 16N(2) of the HDA. On the issue of time limitation, the Developer argued that:

- a) Sub-paragraphs (a), (b), and (c) of Section 16N(2) of the HDA should be read disjunctively, and that different matters shall be applied with different points of accrual for the time limitation.
- b) The Unilateral Deviation cannot be classified as 'defects' within the meaning of the defects liability period (**DLP**). The applicable limitation

period for the purchasers to challenge the Unilateral Deviation is therefore sub-paragraph (a) of Section 16N(2) of the HDA, i.e., within 12 months from the date of issuance of the CCC.

The Court of Appeal disagreed with the Developer's contentions and found, among others –

- a) The Unilateral Deviation was considered “defects” within the ambit of the defects liability clause under clause 29(1) of the SPAs, which covers a wide net of matters, including instance where the parcel was not constructed in accordance with the plans and descriptions specified in the SPAs. Even if the term for installation of CACS was only contained in the DMC, the Court of Appeal held that such term may still be read into the SPAs, as the SPAs and the DMC may be so contemporaneous that they form the same one and singular transaction to reflect the parties' terms and agreements. In all circumstances, the Housing Tribunal had jurisdiction to hear and allow the Tribunal Claim.
- b) Since the Unilateral Deviation was considered “defects”, the applicable limitation period should be sub-paragraph (b) of Section 16N(2) of the HDA, i.e., within 12 months from the expiry of the DLP. The Tribunal Claim therefore was not time-barred as it was filed within the said limitation period.

Conclusion

In the past, there were conflicting decisions on the interpretation and applicability of Section 16N(2) of the HDA². Some courts have found that the

² *Outlet Rank (M) Sdn Bhd v. Malayan Banking Berhad & Anor* [2013] 1 LNS 554, HC; *House Buyer Tribunal & Anor v. Unique Creations Sdn Bhd and other appeal* [2014] MLJU 216, COA; *Westcourt Corp Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah* [2006] 1 MLJ 339, FC

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homebuyer has the choice to bring a claim that is based on a cause of action arising from the statutory SPA within 12 months of any one of the limbs under Section 16N(2) of the HDA. On the other hand, some courts have found that a homebuyer making a claim under Section 16N(2) of the HDA is subject to a different limitation period depending on the subject matter of the claim, i.e., different matters shall be applied with different points of accrual of time limitation. This recent Court of Appeal decision appears to have endorsed the latter interpretation.

We can also observe that the courts have maintained the trend of interpreting social legislation or contracts towards ensuring maximum protection for homebuyers against developers. This decision serves as a timely reminder to developers not to deviate from the terms of the SPA unless prior consent from the homebuyers is obtained when modifications are necessary.

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